TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 73.

LEONARDO SANTOS, MATIAS ADRIANO, ANGEL LUNA, AND TEODORO SANTOS, PLAINTIFFS IN ERROR,

vs.

THE HOLY ROMAN CATHOLIC AND APOSTOLIC CHURCH AND LORENZO GREGORIO, PARISH PRIEST OF SAID CHURCH, IN THE MUNICIPALITY OF TAMBOBONG, PROVINCE OF RIZAL.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED MAY 2, 1907.

(20,691.)

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1 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

No. 2842.

LEONARDO SANTOS, MATIAS ADRIANO, ANGEL LUNA, and TEODORO SANTOS, Plaintiffs in Error,

vs.

THE SACRED APOSTOLIC ROMAN CATHOLIC CHURCH and LORENZO GREGORIO, Cure of said Church in the Municipality of Tambobong, Province of Rizal, Defendants in Error.

Transcript of Record.

Writ of Error from the Supreme Court of the Philippine Islands.

Be it remembered that in the above entitled action the following proceedings were had before the Supreme Court of the Philippine Islands:

On the 17th day of August, 1905, there was filed with the Clerk of the Supreme Court of the Philippine Islands a bill of exceptions in the above entitled case from the Court of First Instance in the province of Rizal, Philippine Islands, which was as follows:

"Bill of Exceptions.

Be it remembered that in this cause the following proceedings were had in the Court of First Instance of the Province of Rizal.

On the 20th day of May, plaintiffs filed the following complaint:

'Come now the plaintiffs, and for cause of action allege:

1st. That the plaintiff, the sacred A. R. C. Church is a corporation and a lawful religious and ecclesiastic entity, existing in all parts of the worlds, and particularly in the Philippine Islands,
2 where it has enjoyed since immemorial time, and actually enjoys the right to acquire and possess for the uses of the church and also for their perfect and complete dominion, properties of every kind and description, real as well as personal, including that certain property described herein and which is the object of this suit;

2nd. That the plaintiff Lorenzo Gregorio is the duly appointed, qualified and acting priest of said church in and for the town of Tambobong in the Province of Rizal; and that in the barrio of Concepcion of the said town, there is situated a certain chapel or building, which belongs to said A. R. C. church, together with its adjoining convent and the lot on which said buildings are constructed, founded many years ago for the only and exclusive purpose of preaching, teaching and propagating the faith, doctrine, use, discipline, ceremonies and worship of the said A. R. C. church, and that since immemorial time, and since the time of their construction, founda-

tion and erection and since more than forty years last past, the said chapel or building, the adjoining convent, and the lot or land within its fences, where they are situated, and which constitute the above mentioned property, have been devoted to the A. R. C. faith until the end of the year 1902, and are actually the absolute property of the said A. R. C. church and at all times have been in the open, adverse and uninterrupted possession of the said church until the month of November, 1902;

3rd. That the plaintiff Lorenzo, in representation of the said church, and in his character as priest in and for the said town of Tambobong, by virtue of the constitution, rules, canons and government of the said church, and according to law, is entitled to the possession, use, occupation and ownership of the said chapel or building and of its convent, situated, as above stated, in the said barrio of Concepcion of the said town, with the obligation and duty to
3 devote the same to the exclusive uses of the A. R. C. church, and to watch that said chapel be not perverted to uses, strange and contrary to the A. R. C. church.

4th. That the defendants deprive plaintiffs unlawfully of the possession of the said chapel and *and* prevent their complying with their duty in the administration of the A. R. C. church, and from devoting the said chapel to the object and use for which it was built; and that contrary to all reason and right, and against the will of all the persons who have conributed to the construction of said chapel, the defendants devote the same to purposes and objects of a religious body and a religious doctrine contrary to the A. R. C. religion, and that, unless this Hon. Court prohibits them, the defendants will continue to pervert the use and object of the said chapel, as above stated, against all justice and right and to the irreparable damage of the plaintiffs.

Wherefore the plaintiffs pray that the defendants be summoned and ordered within — days to allege, or to state to this Court the right which they claim to have to the said chapel, and their reason why they prevent the plaintiffs, as above stated, and that defendants, in case they are unable to state any right to the Court, be temporarily enjoined from devoting said chapel to uses contrary to those of the A. R. C. church, and that they be prohibited from preventing the plaintiffs to devote the chapel to the uses and object of the A. R. C. church, for which it was built, as above stated, and that after the hearing of this cause, said chapel be declared to be the property of the A. R. C. church in the lawful possession of the priest of the town of Tambobong, *i. e.* the plaintiff Lorenzo Gregorio and his successors, and that the defendants have no right to the same.'

The 6th day of June, 1904, the defendants entered their appearance and filed the following demurrer to the complaint:

4 'The Clerk is requested to enter the appearance of defendants by their attorneys in the above entitled case.

The same defendants propose a demurrer to the complaint for the following reasons:

1st. The Roman church has no personality to enter said suit.

Because said church, as a society or a juridical person, according to secs. 32 and 38 of the Civil Code in force, wherever it is established,

must have articles of foundation in accordance with the law, and must be governed by the rules agreed upon in the year 51 between the pontifical and civil powers. For its due representation in this action, it must be shown that the text of said articles of foundation and of said rules authorizes a layman, as the attorneys, or a mere priest of alms to represent said church in a suit, aside of the fact that the bull of Alejandro VI of May 6, 1495 and the Royal decrees up to the now extinguished right of patronage, state specifically that only a Bishop can enter a complaint in the name of the A. R. C. church: all of which is not shown in the complaint filed in this case.

To overcome this ground of the demurrer, the change of sovereignty can not be alleged: because the American sovereignty has not modified the Civil Code regarding the juridical personality, hence secs. 35 and 38, above referred to, are still in force, and the due representation of the A. R. C. church in this cause is not shown in accordance therewith and with the other above mentioned rules.

Neither has the plaintiff Lorenzo Gregorio personality to enter said complaint.

Because he has not only failed to show his character as priest, owner of alms, but, even if he were priest of alms, he has not shown his right as special delegate to represent the A. R. C. church instead of a Bishop or a General Syndic, who are the persons entitled to file a complaint in the name of the A. R. C. church for real, and not spiritual property. As priest of alms, according to the title and rules, at the most, he has only the spiritual qualification to administer sacraments, and in worldly matters, he can safe-keep the charity or metal-ic funds of the parish. The qualification of administering real estate, or of possessing and appropriating the properties acquired by the A. R. C. church is never granted a mere priest of alms, or parish-priest; nor can he encumber or negociate them, nor litigate, without special delegation by his pope, in accordance with the canonical law and with the constitution known as "Apostolica Cedis" of Pio, which provisions the said Lorenzo Gregorio must not disobey, if he claims to be a Roman Catholic.

2nd. There is another action pending between the same parties, based on the same causes.

Really: on the 29th day of April, 1903, in the same Court, the same plaintiff filed a complaint in the same matter and against the same party defendant. The present complaint is nothing but a literal copy of said first complaint with the small and accidental omission of the thousand pesos which are prayed for in the first complaint. The causes of the present complaint are the same as those alleged in the first one, also the prayers are the same, with the accidental or secondary addition in the present complaint of praying for an injunction. The party defendant is the same as in the former action: *i. e.* the chaplain of this barrio as well as the representatives of the barrio, from whom it is sought to recover the property. Said first action is still pending of execution, deplorable or unfavorable and fatal for the plaintiff.

3rd. The complaint is defective and there is a misjoinder of parties.

The complaint is defective because it neither has a determined title or heading, nor does it state the character of the parties defendant, nor does it state whether or not they are in possession of the property claimed therein; and finally the complaint ag-
6 glomerates a mass of prayers for special relief, and ordinary relief of recovery, without stating the grounds therefor.

There is furthermore a misjoinder of parties, because in the title they are plaintiffs, while on page 3, Lorenzo Gregorio is said to be the representative of the other party plaintiff, the A. R. C. church, which is a misjoinder of the two parties plaintiff, who in paragraphs 1, 2 and 4 of the complaint are said to be two distinct persons, each of whom has his own cause of action.

In the same complaint also the parties defendant are misjoined; because they are made defendants indistinctly, without stating the purpose for which they are made defendants.

4th. The facts alleged in the complaint do not constitute a cause of action.

Because in the complaint itself, in its paragraph 4, the plaintiffs confess that they are not the owners of the chapel, convent and lot in this barrio of Concepcion, but that the inhabitants of the barrio have contributed and performed the construction of said buildings; wher from it results, according to the confession of plaintiffs themselv that the inhabitants of this barrio of Concepcion are the own s of the said buildings.

In paragraph 2 of the same complaint, the plaintiffs also allege that since the month of November, 1902, they do not possess, or have not been in possession of said buildings, mentioned in the complaint.

In other words: that the facts alleged in the complaint only confirm that the plaintiffs are not the owners, and that they are not in possession of the buildings mentioned, that according to the open and official letter of Governor General Taft, a circular of general and obligatory character since January 10, 1903, the plaintiffs must respect the possession of said buildings, which the said plaintiffs allege not to have since the year 1902 up to the present time.
7 Therefore, the facts alleged in the complaint are not sufficient to constitute a cause of action, or to entitle the plaintiffs to sustain this special proceeding, praying for the special remedy of an injunction, instead of having filed a complaint for the recovery or restitution of possession in an ordinary proceeding.

5th. The complaint is ambiguous, unintelligible and vague.

Because said complaint alleges in parts that said sanctuary is a chapel, and in other parts that it is a church; and as to the time, in one part the construction is alleged to date from immemorial time, while in the following line it is stated to be forty years, and after alleging that the plaintiffs are the owners of the said chapel, it is said that the inhabitants of this barrio are the owners of said building. The complaint is so unintelligible and vague, that neither in

the title, nor in the body, nor at the end *it is* clearly stated what kind of a suit is being brought, nor what character the plaintiffs have, nor what interest the defendants have in this matter; furthermore, the plaintiffs fail to specify the causes of action, which they claim to have, and fail to state the kind of damages which they are about to sustain; and what is worse, and makes the said complaint still more vague and ambiguous, is that two kinds of injunction are prayed for, and that independently in this case the recovery of property is demanded, and all these prayers are made subject to the condition that the defendants allege no right to the buildings in question at the time of being heard in this Court. Wherefrom it must be concluded that, since the defendants on the 31st, in the Supreme Court, by their attorneys, before the Hon. Johnson, who summoned and heard them, alleged to be entitled to the ownership and possession of the said buildings in question, that the plaintiffs now renounce their prayers which in the complaint are made subject to the condition that the defendants say nothing or that they allege no right. This is an evident ground, showing that the complaint is ambiguous, unintelligible and vague.

8 Wherefore the defendants pray the Court to consider this pleading as filed in due time and form, to acknowledge receipt of the same, and to sustain the demurrer filed by the defendants, with the costs of this incident to plaintiffs, and that this action be definitely dismissed in favor of defendants.'

On the 11th day of July, 1904, the Court, having heard the grounds alleged by both parties, entered the following order, overruling the demurrer filed by the defendants:

'The questions proposed in the demurrer, are undoubtedly very important.

I recognize that the attorney for the defendants has shown great talent in the presentation of the arguments made in support of his petition. And, had I not had occasion to decide recently in the Iloilo Court an analogous question, I would have been compelled to reserve my decision for a later date. But the questions which arose in the case of the A. R. C. church, represented by Bishop Roker of the Diocesis of Jaro, in the litigation over the ownership of Ajuy, Concepcion and Sera properties, of the province of Iloilo, are in substance identical with those here presented for the decision of this Court. After a careful study of these questions, I have finally become convinced that the actual status of the laws now governing in the Philippine Islands,—and in this, I refer to the Spanish laws now in force, as well as to the acts of the Military Government and of the Hon. Civil Commission—do not sustain the doctrine which refuses the A. R. C. church the true and lawful qualification to acquire and possess property, and to appear in court as plaintiff or defendant. Doctrines which prevailed in certain times of disturbance in Spain, undoubtedly were the cause of the laws called "Laws of desamortizacion," by which the religious communities and other entities, called "Mano muertas" (dead hands), were deprived of the right of possession and enjoyment of real property, but while

9 this was a certain legal status during certain times in Spain, said laws were never enforced in the Philippine Islands, and

even supposing that they really were enforced, said laws were expressly revoked by the concordate executed between the "Santa Sede" during the papacy of Pio IX and the Spanish Government during the reign of Isabel II the Catholic, and by virtue of said concordate the A. R. C. church was declared to have the perfect qualification to acquire and possess property of every description, and said right has ultimately been sanctioned by the provisions contained in sec. 38 of the Civil Code.

In my opinion it is not incumbent upon the Court to decide now the theological questions advanced by the defense, nor those questions which affect the canonic order and which might be taken into consideration at the time that the constitutive right is being tried, but I think that only such questions ought to be considered which can be solved within the limit of the laws in force and governing in the Philippine Islands.

It is alleged that the A. R. C. church has no qualification to file the complaint which is the object of this action because it has not shown its character, or the character which it claims to have under its constitution and by which it is entitled to acquire worldly property, and especially the chapel and the land on which the same is built in the barrior of Concepcion of the municipality of Tambobong; and it is also alleged that Lorenzo Gregorio has no personality to appear as plaintiff in this action, because it has not been shown that he is the proper or acting, duly appointed priest of the A. R. C. church in the municipality of Tambobong, and that, even if he were thus appointed, by the canons of the A. R. C. church he is not qualified to file a complaint in court without special delegation from his chief, *i. e.* the pope or bishop. In this regard I consider that, if I had to decide this question according to the Code of Civil Procedure, the defendant would have good reason.

For really, according to sec. 516 of the Spanish Code of Civil Procedure, among other things, the mere fact that the plaintiff fails to show his character or the representation by which he claims, or the insufficiency or illegality of the power of attorney exhibited by the solicitor of one of the parties, is sufficient to sustain a demurrer. And this was logical under the spirit of the provisions of the Code of Civil Procedure, because sec. 456 provides that it is indispensable that each complaint be accompanied either by the power of attorney which proves the personality of the solicitor, or by the document or documents which show the character of the litigant in the suit if he sues as legal representative of some person or corporation. But the American Laws have abandoned said principle. And sec. 114 of the Code of Civil Procedure, now in force, provides that every action must be prosecuted in the name of the real party in interest, and that any person should be made a defendant who has or claims an interest in the controversy or the subject matter thereof, adverse to the plaintiff, and this Code does not require the plaintiff to attach necessarily to his complaint the document which shows his personality, as was essential under the rules of the Spanish Code of Civil Procedure.

Regarding the *lis pendens*, which also has been alleged, as a

ground for demurrer, this question falls clearly under the provisions of sec. 92 of the Code of Civil Procedure, which says: "When any of the matters enumerated in section 91—among which there is the *lis pendens*—do not appear upon the face of the complaint—as it happens in this case—the objection can only be taken by answer," and in my opinion this is due to the fact, that according to the spirit of the American Code of Civil Procedure the questions of demurrer are questions of law which may be deduced from the facts stated in the complaint.

11 Regarding the other ground, *i. e.*, the misjoinder of parties plaintiff and defendant, I do not find anything in the terms of the complaint to justify this ground.

The A. R. C. church is in this action the principal plaintiff, and prays to be declared the owner of the church, convent and lot stated in the complaint, but although being the principal plaintiff, it may well also include in this complaint Lorenzo Gregorio, who according to the complaint has a real interest as administrator or possessor of the said chapel and convent in the name of the said A. R. C. church up to the year 1902, in order that the possession and enjoyment of said properties continue in the hands of the A. R. C. church and that the latter suffer no disturbance of any kind from the defendants. I neither find the complaint to be vague or unintelligible. It is a true complaint for the recovery of property, and the question whether the owners of said chapel, convent and lot in the barrio of Concepcion are the inhabitants of said barrio, who have erected said buildings of the A. R. C. church, is a question of fact to be discussed during the trial, but contains a true, clear and definite question which may be the object of a congruent final sentence. In my opinion, also the other questions proposed must be considered during the trial, because they are not questions of form, but go right to the heart of the question.

Therefore the demurrer is overruled and the defendants must answer the complaint within fifteen days. It is so ordered.'

The 12th day of July, 1904, the defendants took exception to the decision of the Court, overruling the demurrer, and filed the following answer to the complaint:

'The defendants, among them Angel Luna as eldest brother of the brotherhood of the Sanctuary of the barrio of Concepcion, without prejudice to the exception filed against the decision of the Court, overruling the demurrer filed in this action, for their answer to the complaint, allege:

12 1. They deny each and all of the allegations of the complaint in all and each of its paragraphs.

2. The brotherhood of Concepcion is an association and foundation of public interest, represented by the elder brothers, who by custom dating back to immemorial time, are elected from year to year, in order to represent the brotherhood in all its properties, rights, interests and obligations.

3. That the barrio of Concepcion, or the brotherhood of said barrio, represented by the elder brother, the defendant Angel Luna, is the only owner, proprietor and possessor of the chapel, convent and lot the recovery of which is prayed for in the complaint.

4. Said association, or brotherhood of the sanctuary of this barrio of Concepcion, since its foundation over sixty years ago, has continued up to the present time, in its representation and rights.

We will still allege many more grounds of fact and law:

5. Therefore, though in a few words, we will still now express separately other grounds for our opposition to the complaint.

A. The plaintiffs have not the ownership of the buildings and lot, as they claim in their complaint, because said buildings were erected by the inhabitants and for the inhabitants of the barrio itself, and the lot on which said buildings are erected, is property of said barrio itself.

B. The plaintiffs have neither the possession of the said properties, because since the erecting of the said buildings, which dates back over a century, the people of this barrio, and in their name the elder brother, was the person who always justly and lawfully had and disposed of the keys of the chapel and convent, which he opened and closed at his discretion, delivering and demanding the keys to and from whomever he saw fit, in whatsoever manner and at all times, without orders from anybody and subject to nobody.

13 C. Whenever the chapel, church or convent was in need of repairs, or if money was needed for a celebration, or if the people wished to invite a priest to hold mass and preach, and if they treated him as their guest in the convent, all these matters were looked after and attended to by the elder brother.

D. The object of the erection of said buildings was not precisely the idea of turning them over to the use of the A. R. C. church, but to that religion which would less exploit the people, or that religion which was most advantageous for the best interests of the barrio, and even this religious object was not so important that the buildings might not also have been used for other purposes of moral and charitable character, according to the wishes of the inhabitants of the barrio, who are the owners and have the right to dispose of their property.

E. Regarding said buildings, when the assistance or visit of a priest of any profession was desired, the intervention of his church was not different from the intervention of an Undertaker, who sends his workmen and servants when they are needed, and receives therefor a fee, wages or charity money.

F. The inhabitants of this barrio, and in their name the elder brother of the brotherhood, do not unjustly and unlawfully prevent the A. R. C. church to use the chapel, to which said church against all right claims to be entitled, the same as it would not be unjust and unlawful that the Italians designate the Vatican, the palace of the Pope, for the use of their religion or convenience, and it cannot be said that the inhabitants of this barrio of Concepcion are unlawfully prevented by this use, as they have no right to interfere in matters which do not pertain to them. There being no right, there can be no violation, because the quality or accident always presuppose and depend upon the substance.

G. The strongest proof of the injustice and illegality of plaintiff's claim is the final judgment and consent of the court of Bulacan, of

date September 9, 1903, against these same plaintiffs, and in favor of these same defendants, regarding the same buildings and lot,
14 and for the same causes, said action having even the same title and designation, and being on file in the court of Rizal under No. 167. Its principal part reads litterally as follows, to wit:

"The evidence submitted by plaintiffs has not established the right of the A. R. C. church to the ownership of the chapel, the convent and the land on which they are erected, and which are the subject matter of the litigation, because plaintiffs have not shown any of the manners of acquiring the right of ownership, recognized by the Civil Code."

"The erection and foundation of this chapel, convent and the land on which they are built, according to the testimony of the plaintiff Lorenzo Gregorio, priest of the municipality of Tambobong, himself, is due to the inhabitants, who also keep the same in repairs, wherefrom it appears rather that the residents are the owners of said chapel, convent and land on which they are built, and which are the subject matter of this litigation, and that the only right which the A. R. C. church has had, has been the right to use these properties, which is a right very different from the ownership which is claimed in this action."

"Hence, since the proofs are not sufficient to admit that the A. R. C. church is the owner of these properties by donation—no proof having been submitted to that effect—nor by extraordinary prescription—it being clear that the elder brother has always been in possession of these properties—and finally, no proof having been adduced to show that these properties, built and founded with the funds of the residents of the town, and kept in repairs by them, have passed into the hands of the A. R. C. church as owner, the court must necessarily find that according to our civil law the plaintiffs have no right to recover the said properties."

Decision.

"In view of the above:

"I adjudge that in this case I cannot declare and recognize the plaintiff, the A. R. C. church, as owner of the chapel, convent
15 and fenced land on which they are erected, situated in the barrio of Concepcion of the municipality of Tambobong, province of Rizal, wherefore I dismiss this complaint, with costs to plaintiffs."

Therefore the matter in question is really a matter judicially decided and is now *res adjudicata,* which is fatal and a bar to this action of plaintiffs.

It is of no importance that said judgment has been modified in some minor matters, *i. e.* that the plaintiffs were relieved of the payment of costs, nor can said modification be considered as a dismissal, as a dismissal can only be had before judgment.

H. The churches and convents, as well as the tribunals and public schools, since the Spanish regime are considered public property, in the building of which the means of the place itself are especially employed. And the costs were paid precisely by the Government,

or by the towns, by way of taxes. Hence it is clear that said buildings belonged to the municipalities who paid their expenses, or to the said Government, of which the King was a semi-Pope, who appointed those who were to occupy the "terna" for a benefit or church, and since the priests received their salary from the State, and were public officers of the State, performing their work in public buildings or churches, they, like other public buildings, must have passed into the control and ownership of the insular government of today by the treaty of Paris between Spain and the United States of America, which was ratified the 11th of April, 1900, see its sec. 13.

But the above does not apply exactly to the barrios, where the inhabitants or the brotherhood of the sanctuary paid the entire expense of the chapels and "visitas," in the same manner as a private party who builds a house of his exclusive and private ownership. Hence, contrary to the custom of the churches, in matters of chapels or "visitas" or sanctuaries in the Philippines, the inhabitants of the barrio, or the elder brother, always had and disposed of the keys.

16 In other words, as far as this particular point is concerned, if in the balance of truth and justice the public buildings and churches do in no wise belong to the A. R. C. church, there seem to be 99 chances against one that the claim of the A. R. C. church to the chapels and "visitas" is very erroneous and unjust.

The above fact can not be overcome by the supposition that the past friars, in order to obtain more charity money from masses and sermons, contributed through their advice to the multiplication of the "visitas" in the towns, and that they perhaps personally begged going from house to house, and above all to the old women, for the construction of a new visita, and that moreover a license of the Bishop was required regarding the form of the prospective buildings and other matters, that the Bishop would lay the first stone, after collecting charity money, or not, and that the Bishops against payment of charity money blessed the building and granted to some visitas the privilege of dispenses. I say that these facts do not affect the heart of the matter and do not constitute a title by donation in favor of the A. R. C. church, because for the same reason we would have to come to the absurd conclusion that all private houses and buildings would belong to the State or government, the same as all churches, since for their construction also a licence was necessary; and in the construction of churches even a licence of the King was required as the Patron, and in case of default demolition and other orders, specified in special ordinanzes, could follow; and today all houses and buildings in the Philippine Islands would belong to the insular government.

I. It is furthermore worthy of note that the A. R. C. church, the plaintiff herein, is not entitled to acquire anything. The different general laws and those enacted under special circumstances, say so very strictly. The act of October 11, 1820, later definitely confirmed by R. S. of August 30, 1836, and the Act of August 16, 1841, determine the civil qualification of the A. R. C. church

17 regarding the ownership of real property. The latter Act in its sec. 15, says: "The churches and all ecclesiastical com-

munities as well as secular and regular communities, known as "de manos muertas" are from this date prohibited to acquire any real estate or property in any province of the kingdom, be it by will, or donation, purchase, bargain or any other valuable or other consideration." Said law is in force and was precisely enacted under circumstances analogous to those of the present times as far as religion and property is concerned.

It would be needless to allege that the said law was derogated by the Concordate of 1851-1855 and 1851 and by the "altisimo Patronato de Indias", because said concordate was only an agreement, and said Patronato was only a concession of the pope; and a mere agreement and a mere concession can never derogate a law of general character like the one above referred to. If this same law was not applied to the Philippines because of the union existing between the A. R. C. church and the Spanish Government, which is bound only by the concordate concretely sanctiones by sec. 38 for Spain alone, because Spain was the only nation which contracted with the "papal Sede" of Rome, at present, that no concordate exists and that according to the constitution of the U. S. of 1787 said church is separated from the State in the Philippine Islands, at present, I say, the above mentioned law must apply although the same has been enacted in and for Spain, because the same applies to sec. 38 of the Spanish Civil Code, still in force, and which was adopted by the actual government, while no concordate and patronate was adopted in these islands. Furthermore, said sec. 38 refers precisely to said special laws, in determining the legal incapability of the A. R. C. church to acquire property, with exception by will, according to sec. 746, which is not applicable in the case at bar, because the plaintiffs claim and allege title by their acts and not by will.

Therefore, the action which the plaintiff, the A. R. C. church claims to have, has no legal basis, so much so, that, even if
18 it were a fact—which it is not—that the inhabitants of this barrio gave or donated the said buildings to the said church, and if the representative of that same church wished to inscribe the ownership in the registry of property, said representative could only do so in the name of the A. R. C. church at the risk of nullity, because said church is not qualified to acquire property.

J. Since the plaintiffs have thought it proper to rely on rights derived from history; since for them the civil courts are almost open to the highest bidder and will do what the parties pray; and since actually the former bar is abolished, and the civil courts try canonical metters; and since the plaintiffs try to shield themselves with canonical constitutions and dare to call themselves saints and christians; for these four reasons I believe not to go astray, after I have alleged ten legal and applicable reasons, and before I submit the jurisprudence laid down by the Supreme Court, by following the opposite party along the lines which they are leading us. Therefore, although in a few words and only as a complement, we also will adduce canonical, historic and theological matters, where the plaintiffs should be very firm and well trenched, since they call

themselves the A. R. C. church and state in the title that they are Catholic and Apostolic, and therefore trustees of the evangelic truth.

The following, therefore are only addicional considerations:

A. (Canonic) Gonzales, Vequiote, Sancti and others, are of the same opinion as Murillo regarding the qualification of the church. The latter, in his comments on book 3 of Decretales, chapter 35, No. 421, says: "Quilibet seu Eclesia, se addicat in perpetuum dominio bonorum quæ fortunæ dicentur . . . ut constat ex Tex in C. Non dedicatis. 11,129. 1 ibi: Non dicatis aliquid propium . . . et, D. Thomas 2-2-9-186 art. 3 in corp-ibi: inde est, quod ad adquirendum fundamentum charitates, est servanda paupertas ut Mat. 19 si vis esse perfectus, vade, vende omnia quod habes et sequere 19 me; In other words, that each church forever renounces the ownership of wor-dly goods, which is called 'fortune' in this world, and thus he complies with the order of Jesus Christ, who says: Sell whatever property you may have, and follow me. The same: Less de just et jur lib. 2 chap. 22 N. 25: Suar. de Relig. Vol. 4, tr. 10, book 4 Chap. 6 ex. N. 12: Sanc. lib. 7, chap. 22, N. 11: Navar Borbos de Relig. Vol. 3 book 8, chap. 14, No. 8. The same is said in Frid., sec. 25, chap. 2: "The sacred canons perceive the same as the constitutions of the Roman religion. Chap. 11, 12. According to them even the highest are mere administrators and can never appropriate property without violating the obligatory poverty; and said poverty is sanctioned to such extent, that it even extends to the individuals and to their personal property, so much so, that, if a friar at the time of his death was found with money, he would not be burried in sacred ground, or would be unburried and laid to rest in profane ground with his money, as proof of his perdition in hell: B. Gregorio in Diag: C. 6, h. T. L. 14 Tit. 7.

B. (historic) What was the source of such enormous evils in the Roman Church, that the Bishops and Popes absorbed the civil and military power, and some of them managed the wars, others poisoned the hosts, while in the face of the world they represented the Roman church? Violation of Poverty. (Little Dale) (Cip. Valera). "What is the source of the scandals that there have been Popes who were children of 6, 9 and 12 years of age, as Benedict IX, Juan XII and others, and that for more than a century they quarreled, from 1398 to 1418 excommunicated each other and cursed each other, and that at the same time three popes were reigning, as it was at the time of Benedict XIII, Gregorio XII and Juan XXII? This all happened because the Roman church claimed to be entitled to acquire property, in manifest violation of its duty to be poor in truth and in fact. (Recoder Sastre-Cesar Cantu-Casado-Ybo Alfombro.)

And here, in the Philippines? Why is it that the church 20 of Peace got envolved in litigation and that the church, which calls itself "mother" does not terminate the delivery of the parishes to the natives? And what is the reason for that antagonism notable between the secular and regular clerus? What is the reason for the revolution of 1896 and of the former revolu-

tions of '30 and '76, and for the loss of su much blood and so many tears of the poor Filipinos? Without the haciendas of the friars, and if the Roman church had taken up no property, but instead had shown abnegation, undoubtedly there would never have been a revolution or insurrection in the Philippine Islands.

On the other hand: What is the reason that there were those blessed twenty three millions of martyrs, confessors, virgins, priests, the King whose death astonished the world, and proved the divinity of his church? Why those fraternal love-feasts, the famous catacombs, the many anachoretes, hermits and saints at the end of the old age? Because said church did not claim to own and possess real property. It was a building unshaken in its foundation. The poverty only entered its gates, which were forever closed to the cupidity of the eyes and to the luxury of life. That church, yes, was saint, and very saint, Catholic and Roman . . . and the true church of our Lord Jesus Christ, God and man, sweet father, just judge, our absolute Master and redeemer of the world . . . (Rivag-Alzog Nariany).

And again: Which are the causes that gave occasion to such notable and glorious facts and at the same time to the eternal confusion and downfall of the A. R. C. church, which is notable in the Cisma de Oriente of 1054 and the Cisma de Occidente of 1398, in the scandals of the crusades and the taking of Jerusalem in 1291; in the reform church initiated by Doctor Witember M. Luther in 1516; in the thirty years' war of 1618; in the fall of the popist Roman countries in Europe; and in Italy in 1870 in the re-
21 covery of the country by Victor Emanuel; and in Spain since 1481, in the confiscation of more than eighteen million pesos and in the 100,000 victims of the inquisition, up to the complete humiliation of poor Spain in 1899; and here in the Philippines, since October 26, 1902, in the solemn separation of more than 5,000,000 of happy Filipinos who became free of the heavy yoke of a mortal Italian who calls himself Saint or Holiness? . . . and, but this is sufficient: He, who sees the bottom and the relation of said facts, will note that, if the A. R. C. church owns even thousands of millions of pesos in commodities, this does not justify its claim to acquire property; and while said church does not renounce this unjust claim, it only causes trouble and dissatisfaction, and after all will bear the stamp of its downfall and confusion.

C. (Theological) Miguel Sanchez, on moral theology of S. A. de Ligorio, in book 5, chap. 1, page 448, in his answer to doubt 35 says: All moralists deny that custom may abrogate the duty of poverty obligatory in the A. R. C. church: and in his answer to doubt 15, as to whether or not the church is allowed to possess property, he says: Nemine liceat bone temporalia inmobilia . . . etiam nomine conventus possidere: *i. e.*, that the A. R. C. church is not allowed to possess worldly property; and he relies in his answer on the following authorities: Pal. disp. 3, p7, N5; Suar-T-3-de Relig. tr-8 Cao-14-N. 8 Pont-9-9-Escolast C. 4 Laym. L. 4-tr-5 Chap. 7 N. 13; Holz t-1 de prec part p. 485 N. 616 et Salm. tr. 12 Cap. 2 p. 12 part. 4 N. 202 con Vasq. Valent . . . etc.

The dogmatic theologists adduce the reason and say that Sto. Tomas 7, 2, 2, 9, 586 sec. 4 says: The possession of worldly goods causes too much love for this life and distraction from the service to God and misleads the mind from that perfect and complete intention to have God; and to prevent the distraction and to make it possible for a religious man to devote himself totally to God, he must deprive himself of, and must give up all ownership and possession of worldly goods, with exception of those necessary for his living, so that he may say with St. Paul: I travel in the world;' and with St. Francisco de Asis "my wife is the poverty, my inheritance
22 the cross and God all my wealth."

The Gospel sanctions the same doctrine and contains the following passages as to poverty: Ps. 21, 27, 3716, Prov. 15, 16, 16, 8, 28, 6, 2913, Matth. 5, 3, 1921, 29; Luc. 18, 29 Deus liberat et audit pauperes; Job 5, 15, 36, 15; Ps. 9, 19, 11, 6, Eccles. 11, 13, 21, 6, 35, 16, Ysa. 25, 4; Mat. 5, 3; Sed pobres (be poor). Blessed the poor, 11, 5, preach poverty, 26; What is the good to gain worldly property, if therewith you neglect your soul? 21; Your treasure is in heaven, 23. Having property, you enter with difficulty the narrow road to heaven, 26. Lord, all the word-*ly* goods we are willing to leave for you, 10, 16. You shall not quarrel, 19; You are to have possessions in heaven. Do not hunt for property in my kingdom, which is not of this world, Mat. 26, Luc. 22, Juan 18, Mat. 6, 23, Luc. 12, 13. Do not look for and have no ar*e*dant desire for worldly goods, but only for the kingdom of God. Our Lord Jesus Christ himself was born poor, lived as a poor and always refused worldly goods, Mat. 2, 1; Luc. 2, 6; Juan 7, 12; Mat. 4, 17; Mar. 14; Luc. 4, 15; Mat. 27, 49; Mar. 15, 37; Luc. 23, 45; Juan 19, 30; So that those, who claim to be christians and catholic, may follow him. 1 Reg. 8, 71; Ps. 36, 16; Heb. 2, 6; Luc. 12, 15; Mat. 6, 9; Mar. 4, 50; Jerem. 6, 131; Cot. 6, 10; Eclesistes 107; Prov. 10, 2; Tobias 4, 14; Genesis 3, 17; Romanos 1, 30, 20, 21; Luc. 1, 51; 2; Pedro 18, 2; Trm. 3, 2; Job 8, 1; Prov. 30, 12; Ecli. 1, 34; Isaias 29, 13; Mat. 6, 2, 16, 17; Mar. 6, 24; Lucll. 44.

The plaintiffs, according to the character chosen by them in their complaint, can not deny and renounce the said doctrine. They professed said doctrine under oath when they were baptized, when they were confirmed, and when they were ordained, hence, to sustain their complaint, would mean to sustain threefold perjury, or to incur in the same contradiction as that of the catholic and universal church, enclosed in Italy, which is at the least illicit and antichristian, which does not deserve a favorable decision, because where illicity exists, there can be no justice.

23 7. The jurisprudence of the Court in decisions on churches or temples of Concepcion Ahuy and Zara of Iloilo cannot be relied upon. Because churches and temples are not the same as Visitas or chapels, the same as towns or municipalities are different from barrios and villas. The temples give rise to different duties and rights.

Furthermore, the inhabitants of this barrio of Concepcion have, in distinction of those of Iloilo, documents, and even the original—

which the plaintiffs have not—as to the foundation and ownership of the buildings and lot in question, erected by the barrio and only for the barrio, in whose favor there exists furthermore the exception of *res adjudicata*, in spite of hell and in spite of that maternal anxiety with which the A. R. C. church claims them, a claim which will go down under the protest of the entire barrio of thousands of lawful heirs of the founders who never thought of giving the said buildings by way of donation to the A. R. C. church, but reserved them for their heirs. In truth, even supposing that this charitable and unjust claim of the plaintiffs were correct, that a donation was made to them, which is impossible, even then such donation would be null, in first place because the legitimate children of the donors would be thereby prejudiced, and secondly the donation must be revoked by reason of the plain thanklessness of the donee and plaintiff in this action.

There are furthermore the following sentences of the Supreme Court in favor of defendants: "A new complaint is inadmissible as to the same subject matter of a former suit." Sentencia May 24, 67.—Laws 13 and 19, Tit. 22, Partida 3, declare that the second action instituted against a former suit, is not valid, and that the trial of the former must proceed. Sent. 1 Feb., 78.—If no cause of action exists, then there is no ground to suppose that the action has prescribed or to suppose that the laws relative to the prescription of actions have been infringed.—Sent. May 22, 74.—The proper
24 action for the recovery of rights which originate from unchaining laws (leyes desvinculadoras) prescribe in the same manner as the others which provide for the recovery of unencumbered property, and the time of the prescription from the enactment of the law of October 11, 1820, must be counted according to the provisions of the law of August 30, 1836. "Sent. May 23, 55.—When the -fendant answers purely negatively, he has no obligation to prove anything.—Sent. Feb. 20, 60.—The exception of *res adjudicata* lies always when the plaintiffs and defendants of the action instituted, and the cause of action are the same in the second and first.—Sent. January 21, 82.—March 5 and Dec. 31, 66.—Sent. Oct. 6 and 21 and Nov. 30, 57.—Sent. Nov. 27, 63.—Sent. Mar. 18, 61.—Sent. Mar. 11, 63 and 3, 68. and others.—Sent. Oct. 18 and Feb. 27, 67.

All those sentences are applicable to the case at bar, because they affect the substantive law which is still in force. It must be noted that the sentence of May 23, 55, expressly refers to the laws of Oct. 11, 1820, and August 30, 1835, which sec. 38 of the Civil Code mentiones. This is another proof to the effect that said laws are in force, in spite of the concordate of 51, and for that reason undoubtedly the actual government, for high reasons of justice and policy has declared nothing, neither in the Treaty of Paris, nor in the friar lands purchase, nor in the petitions which in the name of the A. R. C. church were forwarded to the Congress of the U. S. for indemnity in the matter of the damages done to temples and convents during the war and the occupation of the same by the American soldiers, the government has declared nothing, I say, up to this date regarding

the ownership of the churches and convents and of the parish funds which amount to hundreds of thousands of pesos, and on the contrary, the former Governor General, the Hon. Wm. Taft, published his open letter of January 10, 1903, and, in order to avoid public disturbances, ordered that the possessors of the churches and convents, Romans as well as Filipinos and protestants, be respected, and that all matters and questions as to the ownership be ventilated in the courts and that each Court decide according to justice and to the special circumstances of the case.

It is impossible that any temple or visita belong to the Roman church. They would anyhow belong to the insular government, or to the barrio, or founder or builder, according to the jurisprudence of the American courts.

8 (L). It can neither be said that each of the defendants does not represent the barrio, because, if according to the argument of the attorney of the other side in the former hearing, "everybody who calls himself a catholic of the Roman church can file a complaint, because he is interested" (sec. 114, act No. 190) then, for the same reason, not only every one of the defendants, but every inhabitant of this barrio of Concepcion can oppose because he is an interested party and has an interest adverse to that of the claim of plaintiffs, and every inhabitant has such adverse interest not only because he belongs to the Filipino church but also because he forms part of the barrio, which is the possessor and owner of the buildings which the plaintiffs claim.

Furthermore, one of the defendants, D. Angel Luna, is elder brother of the barrio and is the representative of the inhabitants of said barrio according to a custom which in this entire country dates back to immemorial time.

Furthermore, the barrio as well as the families are juridic entities, just like a town, of which the barrio forms part, and the barrio has rights and properties, without prejudice to each inhabitant having his private property, just as it happens in every association.

It can neither be advanced that the barrio being a part of the town, the town owns said properties; this being impossible because said properties are of private and particular nature; for the visitas and chapels are built by and for the public good of the inhabitants of the barrio and the ordinary reason therefor was, that the inhabitants of the barrios could not well go and hear mass on account of the distance of the towns, wherefore they themselves erect for themselves a chapel where they can hear mass easily and where they can fulfill their religious obligations, paying for the ground and for the building, and also for the other necessary objects like vestments, mass-books and other ornaments and fixtures of which a regular inventory is kept, and all of which is bought in order that a priest, who has been invited to read mass, does not need to charge for bringing all his ornaments.

9 (LL). It is needless to advance the argument that some roman ist individuals *has* really contributed to the construction of the buildings in question, because, 1st: It is more probable that these supposed contributors do not exist; 2nd: because they are not the plain

tiffs in this case; 3rd: Supposing that they were the plaintiffs, and that they had advanced the claim contained in the complaint, even then said claim would be unjust, because they do not claim a part, but the entire buildings; just as if they had paid for the entire buildings, which is untrue and unjust, as it is unjust that one partner of a company claim for himself all the common property, and even then the following sentences of the Supreme Court are applicable to the complaint: Sent. May 31, 77 (When an extra amount is prayed for, the defendant must only be sentenced to pay whatever has been duly justified, and the plaintiff shall pay the costs when he is guilty of imprudence and bad faith, according to law 48, tit. 2, part. 3.—Sent. Mar. 31, 77.—The trial court, supposing bad faith in an extra prayer may impose the costs in compliance of law 43, tit. 2, Part. 2.—Sent. Feb. 17, 66. Sent. July 4, 74.

These sentences would only be applicable under the above supposition, because the complaint claims not a part, but an absolute and exclusive total, which is a case of extra (plus) petition at the least, hence under our aforesaid supposition, the plaintiffs might be sentenced accordingly.

Therefore the defendants pray the Court to accept this answer as filed in due time and form, noting defendants' exception, and
27 to render a judgment in due time, declaring that the chapel, convent and lot, above referred to, have been, and are the property and the possession of the brotherhood of the sanctuary of the barrio of Concepcion and that the injunction prayed for by plaintiffs be denied, with all costs of this action to the plaintiffs, and that the defendants have such other and further relief as may appear equitable and just.

And the defendants further pray that MM. RR. PP. Nicolas Avendaño, priest at San José de Navotas, Rizal, Candido del Rosario, Coadjutor in the barrio of Flores de Tambobong, and the plaintiff Lorenzo Gregorio, and the Excmo. Harty, Roman Archbishop, with residence in Manila, be summoned to appear, because it is in the interest of the defense and rights of defendants that said four gentlemen testify as witnesses at the time of the hearing, so that the defendants be not deprived of a legal proof of which they are in need."

The — day of ——, —, the attorney for plaintiff filed the following affidavit:

William J. Rhode, being first sworn upon oath, deposes: That the attached complaint is a correct copy of the complaint filed in the above entitled case, pending in the court of first instance of the province of Rizal; that the Judge of the court of first instance is actually absent from said province, and that therefore it is impossible to present the said complaint to the said Judge of the prov. of Rizal.

(Sgd.) J. RHODE.

"UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Province of Rizal.

THE SACRED A. R. C. CHURCH and LORENZO GREGORIO, Priest of said Church in the Municipality of Tambobong, Rizal, Plaintiffs,
vs.
LEONARDO SANTOS, MATIAS ADRIANO, ANGEL LUNA, and TEODORA SANTOS, Defendants.

Complaint.

Come now the plaintiffs and for cause of action allege:

1o. That the plaintiff, the sacred A. R. C. church, is a corporation and juridic entity of religious and ecclesiastic character, existing in all the parts of the world and particularly in the Philippine Islands, where it has since immemorial time enjoyed the right, and now does enjoy the right, to acquire and possess property for the uses of the church and to acquire and possess in perfect and complete ownership property of every description, real as well as personal, including the property particularly described in the present complaint and which is the subject of this action.

2nd. The *the* plaintiff Lorenzo Gregorio is the duly appointed, qualified and acting priest of said church, in and for Tambobong in the province of Rizal; and that in the said barrio of Concepcion of the said municipality there is situated a certain chapel or building which belongs to the said A. R. C. church with its adjoining convent and with the lot on which said buildings are erected, founded many years ago for the sole and exclusive purpose to preach, teach and propagate the faith, doctrine and use, discipline, ceremonies and worship of the said sacred A. R. C. church, and that since immemorial time and since the time of their foundation and erection, and during more than forty years last past the said chapel or building, and the said convent adjoining the chapel, and the lot, or fenced parcel of land on which the same are situated, and which constitute the above mentioned property, have been devoted to the worship of the A. R. C. church until end of the year 1902, and are actually the absolute and exclusive property of the said A. R. C. church, and have at all times been in the open, adverse and uninterrupted possession of the said church up to the month of November, 1902.

3rd. That the plaintiff Lorenzo Gregorio in representation of the church in his character of priest in and for the said town of Tambobong, by virtue of the constitution, rules, canons and regulations of the said church and according to law has the right to the possession, enjoyment, occupation and ownership of the said chapel or building and of its convent situated as aforesaid in the said barrio of Concepcion of the said municipality, with the obligation and duty to devote the same to the exclusive uses of the A. R. C. church and to watch that said chapel be not converted to uses strange and contrary to the said A. R. C. church.

4th. That the defendants unlawfully deprive plaintiffs of the possession of said chapel and prevent them from complying with their duty in the administration of the A. R. C. church and to devote said chapel to the object and use for which it was erected; and that they against all reason and right and against the will of all the persons who have contributed to the erection of said chapel devote the same to the purposes and objects of a religious body and a religious doctrine, contrary to the A. R. C. church, and that, unless this Hon. Court prohibits them to do so, the defendants will continue to pervert the use and object of the said chapel as aforesaid, against all justice and right and to the irreparable damage of plaintiffs. Wherefore the plaintiffs pray that the defendants be summoned and ordered within —— days to allege or explain to this court the right which they claim to said chapel, and their reason for preventing the plaintiffs, as aforesaid, and that, in case said defendants show no right on their part to the court, they be prohibited by way of a preliminary injunction to devote said chapel to uses contrary to the A. R. C. church, and that they are furthermore ordered to abstain from preventing the plaintiffs to devote the said chapel to the uses and to the object of the A. R. C. church, for which it was built as aforesaid, and that after the trial of this action said chapel be declared to be the property of the A. R. C. church in the lawful possession of the priest of the town of Tambobong, *i. e.* the plaintiff Lorenzo Gregorio and his successors, and that the defendants have no right to the same.

Manila, May 21, 1904.

(Sgd.) LORENZO GREGORIO,
Priest of the Sacred A. R. C. Church.'

On the 24th day of May, 1904, the Hon. E. Finley Johnson, one of the Justices of the Supreme Court of these Islands, entered the following order:

'UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

THE SACRED A. R. C. CHURCH and LORENZO GREGORIO, Priest of the said Church in the Municipality of Tambobong, Province of Rizal, Plaintiffs,

vs.

LEONARDO SANTOS, MATIAS ADRIANO, ANGEL LUNA, and TEODORO SANTOS, Defendants.

By virtue of the affidavit in which it is stated that the Judge of the Court of First Instance of Rizal is absent from said province, and of the complaint in which a preliminary injunction is prayed for in the above entitled case against the defendants, ordering them to abstain from preventing the plaintiffs to devote the chapel situated in the barrio of Concepcion of the town of Tambobong to the worship of the A. R. C. church, and ordering said defendants to abstain from devoting the said chapel to uses contrary to the said A. R. C.

church, it is ordered that the defendants Leonardo Santos, Matias Adriano, Angel Luna and Teodoro Santos appear before the undersigned Judge on the 31st of May, 1904, at 10 a. m. in the building occupied by the Supreme Court and the Court of First Instance of the City of Manila, in the City of Manila, in order to allege their grounds for preventing the plaintiffs from devoting the said chapel to the A. R. C. church, and why the defendants devote the chapel to uses contrary to said religion, and to allege whatever further reasons they may have against the issuing of the injunction prayed for. A copy of this order must be delivered to the defendants three days before the date of the appearance.'

The following is a decision rendered by the Hon. Manuel Araullo, Judge of the Province of Pampanga, in civil cause No. 88, for the recovery of possession and damages, dated Manila, March 19, 1904.

'UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance, 4th Judicial District, Province of Pampanga.

Civil Cause No. 88.

31 THE SACRED A. R. C. CHURCH and the Priest of Said Church, in the Municipality of Bacolor, Province of Pampanga, Actually Eulogio de Ocamo, Plaintiffs,
vs.
MARIANO CAGUI, Defendant.

For Recovery of Possession and Damages.

Decision.

From the allegations and matters proven in this cause, it appears:

1st. That since more than thirty years the inhabitants of the barrio of Talba of the town of Bacolor of the province of Pampanga, founded and erected in said barrio a chapel or Ermita, commonly known as A. R. C. church, under the direction, administration and intervention of the parish priest of said town, to which municipality belonged and belongs now the said barrio of Talba.

2nd. That since then, constantly and publicly, the said chapel was devoted to divine worship for the benefit of the inhabitants of the said barrio and of the town generally and that the parish priest of the town of Bacolor and other priests of the A. R. C. church held masses in the same, as well as other ceremonies and worships proper and peculiar of the said church, and that the said chapel was blessed by them and had received also a bell from the parish priest of Bacolor and that the expenses of keeping said chapel in repairs were paid from the funds received from the attendants, and that from the same funds a part of the same was erected on the same lot in which the chapel was built by the inhabitants of the said barrio.

3rd. That on the 27th of February of last year, Gregorio Aglipay, chief of the so-called Filipino independent church, thus called because it does not recognize the authority of the Roman Pontiff, penetrated the said chapel with the knowledge and consent of the defendant Mariano Gagui, Lieutenant of the said barrio of Talba, and administered in the same the sacrament of confirmation, and that on the 6th of March, next following, the same defendant obtained possession of the key of said chapel, which was in the hands of the parish priest of Bacolor, Eulogio de Ocampo, preventing him in this manner from continuing the service of the A. R. C. church in the same, for which up to the time it had been used, and that incident caused the protest of said parish priest and the complaint of this action.

32

According to the canonic law, the provisions of which are applicable to this action by stipulation between the parties, the chapel is a public oratory, designated for the divine worship, and as such is an ecclesiastic and sacred place, forming part of the so-called ecclesiastic properties.

Devoti in his "Instituciones canonicas" says (see sec. 3, tit. 7, book 2): That certain small churches, situated in the field or in the localities and also in the houses of prominent persons, and designated extraordinarily for divine worshiping are called chapels or oratories, and are public or private; the former have a door for the use of the public and anybody can enter the same; once that they have been designated to divine worshipping, they can not be used for profane purposes, and within their walls not only the faithful may pray, but also the sacred sacrifice is celebrated, its altar being duly consecrated; it is necessary to bless them and they have a bell which calls the people to religious worshipping.

It is apparent that all these circumstances concur in the chapel or visita which forms the subject matter of this cause in the barrio of Tabla, of the town of Bacolor.

According to the same author, titl. 20 of the same book, the ecclesiastic properties belong to the church, because the church has the administration and custody of the same, but their real owner is God, hence they are not matters of commerce of the people and their immunity is not derived from any human privilege, but is inherent in their nature.

The civil authorities have also recognized and proclaimed the absolute ownership of the A. R. C. church in the so-called ecclesiastic places, including those which proce-ded from donation made to the church itself, or such as consisted in charitable foundations, or as were designated for divine worshipping.

33

And the law 1, tit. 1, book 5 of the "Fuero Juzgo" says: That all things given to the churches by princes or other faithful servants of God, belong justly to the church; and in law 18, same title and book, it is said that: the thing already given to God, can not revert to men.

An equal provision exists in law 1, tit. 5, book 1 of the "Novisima Recopilacion," both stating that: "all things which have been given to the churches, by kings or other faithful servants of God, from

that time, if they have been directly given, must forever remain and be kept in their power."

The "Leyes de Partidas" have been still more or less explicit and strict regarding these principles: The first, tit. 12, Part. 1, while explaining, which places are called religious, says: "Religious buildings are said to be the "hermitas" . . . and the churches . . . and all other places which clearly are devoted to the service of God, in whatever name it may be done." Law 3, of the same title and Part. says: "Neither the churches, nor the monasteries or other religious places shall be changed . . . but must be continued in their name, the same as the other properties which they are allowed to sell, and they shall not be used for other purposes."

Finally, according to law 12, tit. 28 of the said Part.: "No sacred, or religious or saint house established for the service of God is under the control of men, and nobody can count them among his properties, nor does their ownership belong to the clericals who have them in their possession, but they hold them only for their custody as servants, and because it is their duty to administer them and to serve God in and with them."

The civil code, far from having derogated the provisions of law as aforesaid, has recognized explicitly and strictly the right of the A. R. C. church to acquire and possess properties, confirming each and all the provisions as aforesaid, declaring in its sec. 38
34 that the juridic persons, among whom there is unquestionably the church, may acquire and possess all kinds of property, as well as contract obligations and maintain civil and criminal actions, in accordance with the laws and rules of their constitution; and said section states furthermore that the church in this matter shall be governed by the agreement executed by and between both authorities, for, although the law of October 20, 1820, provided that the churches, monasteries, convents and any and all other ecclesiastic communities, secular as well as regular, should from that date not be allowed to acquire any real property for or without consideration, nevertheless said prohibition was abrogated by the concordate executed by the "Santa Sede" and the Spanish government on the 16th of March, 1851, converted into law on the 16th of October of the same year, and although thereafter by the "Ley desamortizadora" of May first, 1855, said concordate was annulled, and although thereby the sale of all property belonging to the so-called "manos muertas" was ordered, nevertheless this provision was overcome again by the law of April 4, 1860, enacted by virtue of an agreement between the same "Santa Sede" and the Spanish government of August 25, 1859, which in its sec. 1 declares the desire of the said government to assure to the church the continuous and quiet possession of its properties and rights and to prevent every violation of the concordate of the said year 1851; and ordered strictly in its sec. 3 that the government again recognized formally the free and full right of the church to acquire, retain and enjoy property, and goods and values without limitation and reservation. Hence, by said agreement, all contrary provisions were abrogated, and especially all contrary provisions of the said law of May 1st, 1855. And the said

Law of 1860, in its sec. 4, recognized also the church as absolute owner of each and all the properties which were returned to it by the said concordate, so that the former concordate of 1851 subsisted again, in sec. 41 of which it had been declared that the church had the right to acquire under any lawful title, and that all its property, in its possession at the time, and which the church might
35 acquire thereafter, should be solemnly respected, and this provision is actually in force according to sec. 38 of the civil code, for, although said concordate as well as the agreed law of April 4, 1860, were agreed upon between the Spanish government which then governed these islands, and the "Santa Sede," nevertheless, the rights acquired under their provisions subsist and must be respected by virtue of the agreements between the said government and the government of the U. S. in the Peace-treaty of December 10, 1898, and all said provisions show also that the church was then, and is now a juridic entity, perfectly distinct from the State, with its own legal capacity for the purposes mentioned in the said sec. 38.

Since the inhabitants of the barrio of Talba conveyed the chapel, which they erected in said barrio, to the A. R. C. church, for the service of God and for the purpose of worshipping and holding masses in the same, as well as performing all those ceremonies which are proper of the said church; and the said chapel being a religious place, sacred, and ecclesiastic property, the church itself has the absolute ownership and right to the possession of the same in such manner that the chapel cannot be designated for other purposes and that it can not revert to the grantors or any other person, because, as has already been said, a thing once given to God, cannot revert to men, and things given to churches are always kept and owned by the same.

The parish priest of the town of Bacolor holds the right to the possession of the said chapel, because as administrator and representative of the A. R. C. church in the said town, he is the guardian and servant of the said chapel, because he keeps the chapel in order to serve God in and with the same according to law 12, tit. 28, Part. 3, and the fact that the key to the chapel, for some time before the filing of the complaint, was in the hands of certain inhabitants of the barrio, or of the defendant, Lieutenant of said barrio, as has been attempted to be proven in the trial of this action, is of no importance in the face of such rights, for from the above stated
36 reasons it will be understood, that they could not have said key in any other manner than in representation of the parish priest himself as watchmen or caretakers of the "Visita," and it would not be strange that also the Lieutenant of the barrio had been placed in charge in such manner, as by reason of the relation which existed between the State and church during the time of the Spanish regime in these islands, the civil authorities, or their agents aided the priests or the ecclesiastic authorities, and this has undoubtedly been done regarding the chapel in question at the time that there existed no difference of opinion in religious matters between the people of the barrio, or their Lieutenant, and the parish priest of the town to which said chapel belongs, but it is also certain that

there is no reason, nor right, since the State and church are sep
rated in these islands, to compel the plaintiff, *i. e.*, the parish prie
to deliver the key of said chapel to a person, to whom he does n
want to entrust it.

Finally, the act of the defendant, obtaining possession of the ke
of said chapel, however he may have done it, in spite of the prote
of the parish priest, plaintiff in this cause, and pr-venting him i
this manner from worshipping and from performing the ceremoni
of the A. R. C. church, for which object the chapel was designate
and erected by the inhabitants of the barrio of Talba, is not onl
an attempt against the ownership rights of the church, but const
tutes also the wrong of having deprived the church of the possessio
of the chapel, or in its representation the parish priest, who is e
titled to be and must be replaced in the possession in accordan
with the prayer of the complaint.

As to the damages which also are claimed in the said complain
they must be denied because the plaintiff has neither proven the
existence, nor their amount.

For the above reasons, and furthermore in view of secs. 348 a
446 of the Civil Code, the Court declares that the A. R. C. chur
is the absolute owner of the chapel of the barrio of Talba of t
town of Bacolor, province of Pampanga, erected and found
37 by the inhabitants of the said barrio, together with the lot
which it is erected, and that said church has a right to t
possession, enjoyment and usufruct of the same, for the purposes f
which it was designated; and therefore it is ordered that the sa
church, and in its representation the parish priest of the church
the municipality of Bacolor, Eulogio de Ocampo, plaintiff, be
placed in the possession which the said church had of the said chap
and of which it has been deprived by the defendant Mariano Gag
who is ordered to return to said parish priest the key of said chap
and who is furthermore ordered, to abstain in the future from p
forming any act tending to disturb in or to deprive the plaintiffs
the possession of the said chapel. The defendant to pay the costs
this action, but the complaint against him is hereby dismissed
far as the indemnity of damages is concerned. It is thus ordere

This decision shall be effective from the time it is filed in t
Court of First Instance of the province of Pampanga and notifi
to the parties.'

On May 31st, 1904, the defendants filed their following motio
accompanied by preceding facts and the judgment rendered by t
Hon. Felix M. Roxas, then Judge of the Court of First Instance
Bulacan, in cause No. 167 of the Court of the First Instance
Rizal, prosecuted by the same plaintiffs against José Evangelis
Santiago Quimson and Lorenzo Tuason:

"Come now the defendants and represent to the court:

I. That the defendant Teodoro Santos is a coachman and h
no interest in the complaint, but is an inhabitant of the barrio, a
has in no way been dragged into the question.

II. The defendants Angel Luna, Leonardo Santos and Mat
Adriano are elder brother, chaplain and sexton respectively of t

chapel in question, and the latter two live in said chapel by authority of the said elder brother, elected by the barrio of Concepcion,
38 town of Tambobong, province of Rizal, where the properties are situated which are the subject matter of the complaint.

III. They deny absolutely that the chapel and the land on which it is erected, as well as the o-her buildings mentioned in the complaint, belong to the plaintiffs or to any of them.

IV. That neither the plaintiffs, nor any of them, have the right to the possession of the chapel in question, or of the land on which it is erected, or of the other buildings mentioned in the complaint.

V. That said chapel, and the land on which it is erected, as well as the other buildings mentioned in the complaint, are the property of the barrio of Concepcion of Tambobong, and always have been the property of said barrio, because said barrio has erected the chapel for its own use, for its fiest-s as well as for the purpose of mass-reading etc. and that said barrio each year from its inhabitants elects a person who is known by the name of, and his office is that of a- elder brother, who is in charge of said properties and pays the expenses incurred by their use.

VI. That on the 20th of April, 1903, the same plaintiffs filed a complaint in the Court of First Instance of the province of Rizal against José Evangelista, Santiago Quimson and Lorenzo Tuason, which said complaint in all its principal points was equal to the present complaint, and that after the due trial of the case, on the 7th day of August of the same year, the said Court, having heard the testimony and evidence adduced by the plaintiffs, on the same date made the following findings of facts and of law:

"The plaintiff in this case prays for the recovery of possession under sec. 2 of art. 348 of the Civil Code. Such action can be maintained by the owner, and the ownership is acquired by one of the modes provided by sec. 609 of the same code, *i. e.*: By occupation, by operation of law, donation, succession, or else by tradition or prescription.

From the evidence adduced by the plaintiffs the right of
39 ownership of the A.,R. C. church has not been established as to the chapel, convent and lot on which they are erected and which are the object of this action, as none of the modes of acquiring the right of ownership, recognized by the Civil Code, has been shown.

The possession of these properties has always been in the hands of the elder brother, it appearing only that the pe-son who holds that office had the keys of the chapel and was in charge of the chapel and of the expenses incurred for fiest-s, for the search of benefactors, masses and sermons.

The erection and foundation of this chapel and convent, and of the land on which they are erected, is, according to the testimony of the plaintiff Lorenzo Gregorio himself, priest of the town of Tambobong, due to the inhabitants, and the latter maintain the property, so that it rather appears that the inhabitants are the owners of the chapel, convent and land on which they are erected,

and which are the object of this action, and that the A. R. C. church has only had the right to use these properties, which right is very different from the right of ownership which is claimed by the plaintiffs in this case.

The documentary proof consisting in an application signed by various inhabitants of the town of Tambobong, and addressed to the ecclesiastic authority of the A. R. C. church, asking that masses be read in said chapel, does not prove that the A. R. C. church is the owner of the said properties. Said application only proves that said inhabitants wished that the worshipping of the A. R. C. church should be continued in said chapel and that this was the use to which the chapel was designated.

Hence, and in view of the evidence it cannot be admitted that the A. R. C. church is the owner of the said properties by donation because no evidence to that effect has been adduced; nor by prescription because it is clear that the possession of said properties has always been in the hands of the elder brother, and finally because no evidence has been adduced to show how said properties which were founded with funds of the inhabitants of the town and which were maintained by them, happened to become the property of the A. R. C. church, and therefore the Court is compelled to declare that according to our civil law the plaintiff have no right to recover the said properties.

Wherefore I render the following judgment:

By virtue of the foregoing, I adjudge that the A. R. C. church plaintiff in this cause, can not be declared or recognized as owner of the chapel, convent and lot on which they are erected, situated in the barrio of Concepcion, town of Tambobong, province of Riza wherefore I dismiss the complaint against the defendants with the costs to plaintiffs."

VII. That thereafter, on the 3rd day of November 1903, upon motion for a new trial, the Court modified its decision, leaving the sentence finally in the following form:

"I adjudge that the A. R. C. church, plaintiff in this cause, cannot be declared or recognized as owner of the convent, chapel and lot on which they are erected, situated in the barrio of Concepcion town of Tambobong, province of Rizal, wherefore I dismiss the action, condoning expressly the costs."

VIII. That a copy of said proceedings, with the modification of the said judgment, is accompanied to this answer and made a part of the same.

IX. That the defendants Leonardo Santos and Matias Adrian are chaplain and sexton respectively of the said chapel and of the new church, known as independent Filipino church, or "Aglipayana", and that in the present cause the same interests and questions are involved as were adjudged in the proceedings which are attached hereto.

X. That said judgment has not been appealed, nor revoked, nor in any manner annulled, and is therefore still in full force.

Wherefore defendants pray that the Court deny the preliminary injunction, with the costs of said pleading to the plaintiffs.

41 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Bulacan.

Cause No. 167.

THE A. R. C. CHURCH and the Priest of said Church, LORENZO GREGORIOM, Plaintiffs,
vs.
JOSÉ EVANGELISTA, SANTIAGO QUIMSON, and LORENZO TUASON, Defendants.

Court of Rizal.

For Recovery of Possession.

Judgment.

Precedent Facts.

On the 29th of April, the plaintiffs filed their complaint against the defendants in the court of first instance of Rizal, and alleged:

That since more than forty years last past the A. R. C. church has been in possession of, and has had the ownership of a chapel and adjoining convent and a lot, on which the former are erected, in the barrio of Concepcion, town of Tambobong, province of Rizal, which properties, since the time of their construction and foundation, have been devoted to the worship of the A. R. C. church.

That on or about the 23rd day of November, 1902, the defendants unlawfully and by force obtained and entered in possession of the said properties and continue possessing the same, devoting them to the worship of a church other than the A. R. C. church, refusing to redeliver the possession to the plaintiff Lorenzo Gregorio, parish priest of the town of Tambobong, duly appointed as such by the A. R. C. church, and who, according to the statutes of said corporation is entitled to the possession of the said properties.

For the said reason they pray the Court to order the delivery of the said properties to the plaintiffs, withdrawing from the defendants the possession which they actually hold of the same, and ordering them to pay to plaintiffs $100.00 Mexican currency for damages, together with the costs of the action.

On May 26 the defendants filed a demurrer to the complaint, alleging in the same the grounds enumerated in Nos. 1, 2, 5, and 6 of sec. 91 of act No. 190.

On June 1st the plaintiffs and defendants filed a stipula-
42 tion, in which they agreed to file their allegations to the demurrer in writing, in order to avoid them the trip to Pasig.

The defendants, on the 25th of June, filed in writing their grounds for the demurrer.

The plaintiffs, on the same date, asked the court's permission to

amend their complaint in accordance with sec. 110 of Act 190, remitting the amended complaint, of which they gave a copy to the defendants.

This complaint differs from the original complaint only in this, that the plaintiffs therein pray that they be declared to be the owners of the said chapel, convent and lot, instead of asking only for the recovery of said properties.

On July 6 the Court made an order, summoning the parties for a hearing of the motion for the amending of the complaint by the plaintiffs under sec. 110 of Act 190.

On July 20 the defendants answered in writing, representing the grounds of their opposition to an order by the court allowing the amending of the complaint, prayed for by the plaintiffs, and praying that said motion be overruled and that the demurrer be decided.

On the same date, the Court, having heard the defendants in the above described form, made an order, admitting the amended complaint, and ordering the defendants to answer the amended complaint within five days.

On July 27 the plaintiffs moved the court to declare the defendants in default for not having answered the amended complaint within the five days granted them by the court.

On July 28 the Court entered an order of default against the defendants.

On July 29 the court received a motion from defendants, praying to revoke the order of the 20th of the same month, by which the amended complaint was admitted.

On the same day, although the defendants had been declared in default, made an order, summoning the parties to the action to appear on the 1st of August in order to hear this motion of defendants.

43 On the said 1st day of August the defendants failed to appear, while the plaintiffs appeared, and as appears from the records relative to the hearing of the said motion, the order of July 20, admitting the amended complaint and the order of July 28, declaring the defendants in default, were confirmed.

On August 3, the Court received a motion of defendants, praying that the order of July 28th, in which they were declared in default, be vacated.

On August 6 the Court received another motion from defendants, dated August 4, in which the defendants prayed that the court set aside the order of August 1st, confirming the order of July 20, admitting the amended complaint, and the order of July 28 declaring the defendants in default.

The Court did not pass on these motions of the defendants.

The Court, although the defendants had been declared in default, ordered that they be summoned for the hearing of the case set for August 17, because the attorneys, representing the plaintiffs, stated to the court, that regardless of the fact that said defendants had been declared in default, they would allow the defendants to answer the complaint and to submit their evidence if they would appear in Court on the date set for the hearing.

On August 7 the defendants filed a motion, praying that the hearing be suspended.

The Court overruled this motion of defendants, believing that the proceeding adopted by the defendants was calculated to hinder the progress of the Court and to delay the final determination of the cause, because the judicial term was about to conclude, wherefore the case was proceeded with, the defendants being in default.

Evidence of Plaintiffs.

The plaintiffs, in suppo-t of their complaint, presented the testimony of eight witnesses:

LORENZO GREGORIO, parish priest of Tambobong, testifies that he has been appointed parishioner of this town by the actual administrator of this Arch-diocese, presenting the title of his appointment; that the chapel, convent and land, situated in the town of Tambobong, which are the object of this litigation, have been in the possession of the A.R.C. church up to last November, and have been devoted to the catholic apostolic roman worship; that the priest Juan de Ocampo, between the last days of October and the first days of November still read a catholic mass in said chapel with the authority of witness; that on November 23rd last past a mass was read in said chapel by a schismatic priest, and that on the 26th of said month the co-adjutor D. Candido del Rosario and father Taillo went to said church in order to prevent the further mass reading in said chapel by schismatic priests, in the defense of the parish. Witness also went thereafter and saw said two priests surrounded by many people and they told him to go and call for the police; that he went to the barracks, but hearing loud crying, he returned to the chapel and heard that the aforesaid two priests were detained. That the chapel was blessed and has a bell for the purpose of calling the faithful to worship God. He does not know who had the keys to the chapel. But he says that the elder brother should have them, whose duty it is to open and close the doors of the chapel and to take care of the building under the direction of the parish priest. That he is a priest since 1876 and knows that the duty of the elder brother consists in paying for the fiest-s, in finding benefactors, masses and sermons. That the custom of the erecting, maintaining and taking care of the chapels is, that the inhabitants who have erected the chapel, maintain the same. He furthermore gives a description of these properties. He does not know whether or not there exists any title to these properties, and he has not the inventory of the belongings of the church, because he has lost it.

44

CANDIDO DEL ROSARIO, a priest, testifies, that on the 26th of November, last past, as co-adjutor of the parish of Tambobong, he was in the vestry of the chapel of Concepcion in question, in order to oppose the reading of masses and the worshipping in the same in a manner contrary to the A. R. C. church, and that Lorenzo Tuason presented himself as in charge of the chapel by delegation of his

brother, who was the elder brother, and absent at the time.
45 Lorenzo Tuason and the witness had a lively discussion as to the question whether or not the Aglipayans were entitled to worship there, and that thereafter several priests of the so-called independent church arrived, bringing with them a lot of their partisans, and committed violent acts, until they led the witness to the tribunal. He states that the Filipino independent church does not recognize the Pope and has no relation whatsoever with the A. R. C. church.

LEONARDO TAILLO, priest, testifies in the same manner as the former witness and confirms that violence was committed in the interior of the chapel above referred to on the 27th of November last by the partisans of the Filipino independent church.

FELIPE CLEMENTE, 47 years of age, testifies that he knows the chapel and convent of Concepcion since his earliest youth and that said buildings have always been devoted to the worship of the A. R. C. church until last November; said worship consisted in masses and novenaries and in praying. That since last November the partisans of Aglipay hold their ceremonies, masses and baptisms there. He knows the defendants in this case and other inhabitants of the town of Tambobong, whose names he enumerates.

VICENTE RODRIGUEZ, attorney for plaintiffs, says that he knew the Apostolic Delegate Mon. La Chapelle and also the Presbyter Ignacio Ampuero, Secretary of the Chamber of the Archbishop of Manila. As attorney he has searched for evidence in the archive of Manila, referring to this case, and found an application of various inhabitants of the barrio of Tambobong, addressed to Mon. La Chapelle, and begging him to allow that masses *were* read in the chapel in question.

This document was admitted in evidence after the authenticity of the signatures of Mon. La Chapelle and of Sr. Ignacio Ampuero had been recognized. The application is of date October 6, 1900, and is signed by eleven people.

VICTORIANO DE LEON, forty years of age, knows the chapel and convent referred to, since his childhood, and knows that up to November 26 last past, the said chapel has been devoted to the
46 worship of the A. R. C. church, and that since the said date the said buildings are in the hands of the Aglipayans.

He knows the defendants and knows that José Evangelista lives in the convent. He also knows all the people whose names appear subscribed to the document presented by the foregoing witness, with exception of Lino William, and states that the signatures are authentic. He does not know who was the parish priest of Tambobong in October, 1900.

ALEJANDRO SAN JOSÉ, 53 years of age, resident of Tambobong, knows the chapel and convent in litigation since childhood and knows that as long as he is able to remember the same has been

devoted to the worship of the A. R. C. church up to November 26, on which date the Aglipayans took possession, and that the defendant José Evangelista lives in the convent.

Questions of Law.

The plaintiff in this action brings a suit for recovery under subsection 2, sec. 348 of the Civil Code. Such action can be brought by the owner, and this character is acquired by one of the modes enumerated in sec. 609 of the said Code, *i. e.*, by occupation, operation of law, donation, or succession, or on the other hand by tradition or by prescription.

From the evidence adduced, it appears that the plaintiffs have not established the right of ownership of the A. R. C. church to the chapel, convent and land on which they are erected, and which form the object of this action, by any of the means of acquiring the right of ownership recognized by the Civil Code.

The possession of these properties has always been in the hands of the elder brother, under the direction of the priest, but it does not appear from the record what kind of institution or personality that of the elder brother is, it appearing only that the person who held that office, had the keys of the chapel and was in charge of the chapel with the consent of the priest. The elder brothers had also the duty to pay the expenses for the fiests and to find benefactors, masses and sermons.

47 The erection and foundation of this chapel, convent and land on which they are erected, according to the own testimony of the plaintiff Lorenzo Gregorio, priest of the town of Tambobong, is due to the inhabitants of Tambobong, and they are the persons who maintain them, wherefrom it rather appears that said inhabitants are the owners of said chapel, convent and land on which they are erected, and which are the object of this suit, and that the only right which the A. R. C. church has had, has been the right to use said properties, which is a right very different from the right of ownership which is claimed in this action.

The documentary evidence, referring to the application of various inhabitants of the town of Tambobong, addressed to the ecclesiastic authority of the A. R. C. church, begging that masses be read in said chapel, does not prove that the A. R. C. church is the owner of the said properties. It only proves that those inhabitants wished that the worship of the A. R. C. church should continue in said chapel, because it was designated for that use.

It therefore being impossible to admit that the A. R. C. church according to the evidence presented, is the owner of the said properties, neither by donation, because no proof to that effect has been presented; nor by extraordinary prescription, because it appears that the elder brother has always had the possession of these properties; and finally, no evidence whatsoever having been presented to show how these properties, founded with the funds of the inhabitants, and maintained by them, have become to be the property of the

A. R. C. church, it must necessarily be recognized that according to our civil law the plaintiffs have no right to recover the properties referred to.

Decision.

In view of the above, I adjudge that plaintiffs' prayer to be declared and recognized as owner of the chapel, convent and land on which they are erected, situated in the barrio of Concepcion, town of Tambobong, province of Rizal, must be denied, and I therefore dismiss this complaint against the defendants with costs to
48 plaintiffs. It is thus ordered.'

'UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of Customs Claims.

THE A. R. C. CHURCH and the Parish Priest of said Church, D. LORENZO GREGORIO,
vs.
JOSÉ EVANGELISTA, SANTIAGO QUIMSON, and LORENZO TUASON.

For Recovery.

MANILA, *November* 30, 1903.

Order.

This matter being up for hearing upon motion of plaintiffs' attorneys, demanding a new trial, the Court decides, that, having heard the allegations of plaintiffs, and having read the allegations of defendants, filed in writing on this date, the judgment entered in this case, is modified in the following terms referring to the last part of the decision, which must be understood in the following terms:

I adjudge that the A. R. C. church, plaintiff in this cause, can not be declared and recognized owner of the chapel, convent and land upon which they are erected, situated in the barrio of Concepcion, of the town of Tambobong, of the province of Rizal, wherefore this cause is dismissed without express adjudication of costs.'

'The entire body of the judgment, with exception of this modification, is declared subsistent.—It is thus ordered.'

On the 15 day of August of 1904, the Hon. E. Finlay Johnson, associate Justice of the Supreme Court of these islands, rendered the following decision:

'This case was commenced in the province of Rizal, but due to the fact that the Judge is absent from said district during the vacations, a motion for the issuing of a preliminary injunction during the pendency of said cause was presented to the undersigned.

This action was commenced in order to determine the right to the use and occupation of a certain chapel situated within the municipality of Tambobong of the province of Rizal.

After reading the complaint, the undersigned summoned the defendants to appear the 31st day of May, 1904, in order to show cause why said injunction should not be issued in accordance with the prayer. The defendants, complying with said order, appeared the 31st day of May and presented their answer. From the same it appears that in the month of April, 1903, these same plaintiffs commenced an action in the Court of First Instance of the province of Rizal, for the same object as in the present action. At that time Judge Araullo presided — said Court, and according to the answer, he decided the case against the plaintiffs, who failed to appeal. The present action was commenced the 20th of May, 1904. Wherefrom it appears that the plaintiffs did not appeal from the judgment rendered against them, and that they have allowed to elapse more than a year without having done anything to protect the rights which they claim to have to said properties.

The extraordinary remedy of injunction as to the use or occupation of property, by virtue of which those who claim to be the owners, would be deprived of their use, should never be allowed before a judicial decision is had as to who is the owner and entitled to the use of the property, except in the case that it is shown that irreparable damages would result unless the injunction is granted. The object of a preliminary injunction either interlocutory, or in such cases where opposed rights exist regarding the possession of properties or the use of a right, is to preserve the said properties or the right in controversy intact until the matter can be heard and decided definitely. Courts of equity cannot grant the injunction, which would result in giving the possession of the properties to the plaintiff, depriving at the same time the defendant of their use and occupation, unless it is shown that a denial of the injunction would result in irreparable damages to the interested party. Neither do said courts allow this injunction to deprive the defendant of the use of properties of which they claim to be owners, particularly in those cases where the plaintiff has failed to show during the progress of the suit that irreparable damages would result, and where the defendants have shown in their answer that they are entitled to the right or use of said properties.

Neither do the tribunals of equity issue the preliminary injunction when the same modifies the possession, or deprives the defendant, who claims ownership, of the use or possession of the real property while the ownership of the same is still a matter of controversy.

The injunction is not the proper means to obtain possession of property during the pendency of a suit regarding the ownership of the same.

The defendants in their answer allege that they are the owners of the properties in question, and deny that the plaintiffs or any of them have a right to their possession or use.

The issuance of an injunction in the case at bar, would be the same as to deprive persons, claiming to be the owners or possessors of property, of their possession during the pendency of a suit commenced

for the purpose of determining the right of ownership, use or possession of the same, and this without any showing that irreparable damages might accrue to the defendants during the pendency of the suit.

The preliminar- injunction is therefore denied.'

On January 19, 1905, the attorney for the defendants, Don Mariano Crisostomo, filed the following motion:

'Don Mariano Crisostomo Lugo, attorney for the above named defendant, being first duly sworn upon oath, deposes and says: That he is the attorney for the defendants in the above entitled case, and that he in their name states, that the answer to the complaint of the plaintiffs having been prepared by his worthy companion Sr. Felix Sevilla y Macam, and said gentleman having made statements and allegations of the defendants in said answer, which they believe to be inapplicable, impertinent and indecorous, all of said statements being contained in paragraphs D, E, and F of said answer, and of paragraphs H to LL inclusive up to the words "Therefore the de-
51 fendants etc."

And using his right under section 107 in relation with sec. 110 of the Act 190, he prays the Court that after due hearing of the plaintiff it be ordered that from the answer of defendants all the statements and allegations in the said paragraphs of the defendants' answer be stricken out.'

The 19th of January, 1905, the attorney for the defendants filed the following notification:

'To Messrs. Hartigan, Marple *et al.*, Attorneys for the Plaintiffs, Manila:

Gentlemen: Please take notice that the undersigned will ask the Court in the tribunal of the town of Pasig on the 26th day of January, 1905, at the hour of 8:30 A. M., or as soon thereafter as he can be heard, that the Court order the striking out of the statements and allegations contained in the answer of July 12, 1904, filed in the above entitled case, in its paragraphs D, E and F, and those from H to LL inclusive, up to the words "Wherefore the defendants etc.," because said statements and allegations are inapplicable, impertinent and indecorous, and that he will ask for such other relief as may be just and equitable. Said motion will be based on the affidavit attached hereto and on the papers on file in this case.'

On January 26, 1905, the trial of this case was commenced in the court of first instance of the province of Rizal. Both parties appeared and presented the following testimony:

M. Rohde asks the Court to be permitted to amend the complaint, by substituting the name of the P. Lorenzo Gregorio by the name of the P. Lino Kahili, which change took place after the filing of the answer to the complaint, because Father Lino substituted Father Lorenzo Gregorio.

52 The Court allows the amendment.

Mr. Crisostomo asks that the motion, filed by him on the 19th of the same month, be decided.

The Court allows the amendment of the allegations to which said motion of the 19th refers, without opposition on the part of plaintiff.

Evidence of Plaintiff.

Testimony of the witness under oath:

Q. Your name and circumstances?

A. Lino Kahili, exhibiting personal cedula No. 15885, issued the 18th day of ——, 1904 at Silang, Cavite, parish priest of Malabon, 33 yea-s of age.

Q. Since when are you parish priest of Malabon?

A. Since the 15th of December of last year.

Q. As parish priest of Malabon, are you at the same time parish priest of the barrio Concepcion?

A. Yes, sir, because it is all one town.

Q. Do you know the chapel of the Barrio Concepcion?

A. Yes, sir.

Q. Since when?

A. Since 25 years.

Q. Do you know to what worship said chapel was devoted all those years?

A. Yes sir, to the Catholic worship.

Q. Who were the priests who were in charge of the worship in this chapel?

A. Always the priests of the A. R. C. church.

Cross-examination by defendants:

Q. Where were you born?

A. In Malabon, in the place called Tañon, Malabon.

Q. Have you taken possession of that chapel as parish priest of Tambobong?

A. No sir.

53 Q. Why is it that you have not taken possession of the chapel?

A. The chapel is occupied by the Aglipayans.

Q. Do you know since when it has been occupied by the Aglipayans?

A. I think it is more or less since the year 1902.

Q. Do you know whether any priest of the A. R. C. church has ever held service there spontaneously, *i. e.*, without invitation of somebody of the barrio Concepcion?

A. Yes sir, I myself have held services when I still was priest of Silang, and also other priest- have held services, read masses and have confessed without any invitation from the inhabitants of the barrio.

Q. By whose consent did you hold services in this chapel?

A. With the consent of the parish priest.

Q. Who was the parish priest?

A. Mateo Evangelista.

Q. Who furnished you the ornaments necessary for reading masses, as for instance the "caliz," "aras," etc.?

A. The parish priest of Malabon.

Q. Out of whose hands did you receive said ornaments when you were holding services of the A. R. C. church, be it for mass-reading, for confessions or any other service?

A. Personally I am unable to state who delivered the ornaments to me, but I believe that they were servants of the priest.

Q. Do you know who those servants were when you read mass on that occasion?

A. No sir.

Q. Do you know from where said servants took the ornaments, which you used during the service?

A. They took some from the town and others from the chapel.

Q. On that occasion, which were the ornaments that were brought from the church, and which from the chapel?

A. The ornaments that are being used daily, I took from the chapel, but the ornaments necessary for a solemn mass were from the church.

54 Q. Do you remember the year, month and day on which you held the mass to which you have referred in your former answers?

A. I cannot fix now the years, days and months, but I can state for certain that I have read many masses.

Q. Can you state what ornaments came from the church on solemn days?

A. Yes sir.

Q. Please enumerate them.

A. Among them the "casulla," "dalmaticos," cape and other things.

Q. Have you seen where said ornaments were kept, which were in the chapel, when you read mass?

A. Yes sir, in the bureau.

Q. Was that bureau locked, or not?

A. I cannot state whether or not it was locked.

Q. Did you see the servant open the bureau with a key?

A. No sir.

Q. At the time of reading mass, did you not speak to some inhabitant of the barrio of Concepcion aside from the priest of Malabon?

A. No sir.

Q. Since when have you been ordained as presbyter?

A. I was ordained in 1895.

Q. Do you know who caused the erection of the chapel of Concepcion?

A. No sir.

Q. Do you know whether this chapel has been constructed with the license of the Archbishop?

A. I am unable to answer that question, because when I saw the chapel first, it was already built.

Mr. ROHDE:

Q. Give a short description of the chapel with the land on which it is built.

A. This chapel is situated in the barrio of Concepcion, its walls are of stone. its roof of iron, attached to it is a convent, and I think is situated in San Bartolome street.

Q. How much is the area more or less of the land occupied
55 by the chapel and convent?

A. I believe that the land has a frontage of about sixty meters, and is about sixty meters deep.

Q. Are there any street on the sides?

A. On both sides.

Q. Do you know who are the owners of the adjoining lands?

A. No sir.

Mr. OLIVEROS:

Q. Can you, as priest of the town, acquire property without the consent of the superior, for the parish?

A. Not property of great value.

Q. State to the court up to what amount more or less the priest may acquire?

A. He may expend more or less P25.00 per month for expenses of the parish.

Q. But can he buy, or build?

A. He may acquire objects for repairing the church up to P25.00 more or less.

Q. Is the chapel of Concepcion the property of the parish of Malabon?

Mr ROHDE: I object to that question.

The COURT: The question is admitted.

A. I believe yes.

Q. You are not certain?

A. Almost certain.

Q. The complaint alleges that the plaintiff has a right to acquire, can you state how the church acquires?

Mr. ROHDE: I object to the question.

The question is withdrawn.

Q. How did the parish of Malabon acquire the chapel of Concepcion?

56 A. I cannot answer that question, because, as I have stated before, when I first knew the chapel, it was already built; I do not know the mode.

The testimony was read to witness, who ratified the same.

NICOLAS AVENDANO:

Q. Do you know the chapel of the barrio Concepcion?

A. Yes sir.

Q. Since when?

A. Since a long time, I know the chapel since my childhood.

Q. Do you know the kind of worship to which the chapel has been devoted all that time?

A. To the A. R. C. religion.

Q. Who was the priest who held the services in said chapel?
A. The Cathloic priests.
Q. The priests of what town principally?
A. Of Malabon.
Q. Do you know how often services were held in the chapel?
A. Very frequently, almost every day, even if it was not a feast day.
Q. Do you know what the religion of the persons is who visited the service in the chapel?
A. The catholics.
Q. Can you tell me what is necessary for the holding of services in a chapel by a priest?
A. Yes sir, it is necessary that the priest is ordained by the catholic religion, and that the building is built for that purpose and for the catholic worship.
Q. In other words, a house without that character can not be employed as a chapel of the A. R. C. church or as a church?
A. Yes sir.
Q. And what is necessary to lend a house the character of a chapel or church?
A. It is necessary that the church or the chapel where mass is read have the licence of the Bishop, and that is be blessed by a
57 catholic priest or by the priest of the town.
Q. Have the services of the A. R. C. church been held in this chapel without interruption?
A. Yes sir, up to the time of the interference of the two fathers of the barrio.

Cross-examination by defendants:

Q. The requisit-s, which you have enumerated, have been observed in this chapel?
A. Yes sir.
Q. How do you know?
A. Because I was there in charge.
Q. Have you seen when the church was blessed?
A. No sir, I have not seen that, because the chapel is older than I.
Q. In other words, it is only a supposition of yours that the chapel has been blessed?
A. Yes sir, but I am almost certain because it is a catholic chapel, and because it is a necessary condition that it be blessed before mass can be read there.
Q. Have you known this chapel from the beginning the same as is now?
A. Yes sir, in the principal points.
Q. Since when?
A. I have said already, since my childhood have I seen how masses were read there and how very many people assisted.
Q. What roof did the chapel have when you went there?
A. I have not noticed the roofing, but since I am priest of Navotas, and that is seven years, the roof was the same as it is now.
Q. Have you received emoluments or donations when you read mass there?

A. Yes sir, from the priest.

Q. Do you remember who the priests were, when you read masses there?

A. Yes sir, I remember two, Father Mateo Evangelista, who
58 is actually priest at Calumpit, and Father Juan Somera, who actually is priest of Paombong.

Q. From your former answers I must conclude that the chapel has been modified or reformed?

A. I do not know what has happened since the Aglipayans have obtained possession of the chapel, but I have seen white paint outside.

Q. You said that you had been in charge of this parish, can you tell me, when?

A. I cannot state when, but it was when Father Chanco and Father Domera left, and this was about the time of the cholera, 1901, more or less.

Q. Have you been in charge of this parish before that date?

A. I believe, yes, because, when Father Somera left I was placed in charge of this chapel, and I believe that was in 1900.

Q. Were you in charge of the chapel before 1900?

A. No sir.

Q. How many years have you been priest?

A. 27 years.

Q. How long have you been parish priest of Navotas?

A. Since seven years.

Q. When you were in charge of the parish, who was placed by you in charge of the chapel?

A. Capitan Blas.

Q. Is there a key to the chapel?

A. Yes sir, the door has a key.

Q. Who has charge of the key?

A. At that time Capitan Blas Marcelo.

Q. Does he receive payment from you, or anybody else for taking care of the chapel?

A. Yes, sir, he received a compensation.

Q. Do you know where that compensation came from?

A. From the parish funds, the catholics, the priest.

59 Q. Do you know how much the compensation was?

A. I do not remember its amount now.

Q. Whenever you read mass in the chapel, where did the ornaments come from, which you used?

A. From the chapel of the catholics.

A. A donation?

A. Yes, sir, a donation of the catholics.

Q. Can you say whether this chapel is property of Malabon, or of the parish of Malabon?

A. The chapel has been built from donations of the catholics for the purpose that catholic priests should read masses there, and the chapel belongs to the A. R. C. church.

Q. How do you know that such donations were made expressly to the A. R. C. church?

A. Yes sir, because all chapels have been built for the service of the catholics.

Q. Do you know whether said chapel has been built with the permission of the Ordainer?

A. It is to be supposed that it has been built with his license.

Q. Do you know whether that licence appears from some document?

A. It is to be supposed.

Q. Then, you have not seen that document?

A. No sir, I have not seen it, but it must be supposed.

Q. Do you know whether this chapel has its own funds?

A. Father Somera told me that it had its own funds, but I know this only from reference.

Q. When you were in charge of that parish as parish priest, you must have known whether or not the chapel had its own funds.

A. My predecessor told me that there were funds, but I did not care to investigate where those funds were, because I was priest of Navotas and was only in temporary charge of the chapel.

Q. And why did you not care to investigate whether the chapel had funds?

A. Because I had plenty occupation in my parish.

60 Q. Does any book exist in the parish as to this chapel, or any records?

A. I also was told that they existed, but I have not seen them.

Q. When you took over this parish, from whom did you receive all the property belonging to the same?

A. From my predecessor.

Q. Did you receive them according to an inventory?

A. No sir, Capitan Blass had everything in his charge.

Q. Do you know from what funds the chapel was erected?

A. Funds brought up by contributions of the catholics for the purposes to worship in accordance with the rites of the A. R. C. church.

Q. Catholics of the barrio Concepcion?

A. Not only those of Concepcion contributed, but also the residents of other towns, and even those of Navotas.

Q. How do you know that?

A. The people of my town have told me so, good, true and devote persons.

Q. Can you state who those persons are, who have told you so?

A. Pelagia Bernardo, the widow of Capitan Naval, also Pascuala Andres, daughter of Capitan Julian, and benefactors of those masses which were read there, and these are the persons whom I remember just now.

Q. Do you know who collected the donations to which you refer?

A. I do not remember, but they told me that they made contributions.

Q. Do you know whether those donations were really made to be converted to the building of this chapel?

A. That is what the said persons told me.

Q. At the time that you were in charge of this parish, do you remember ever having read mass?

A. Yes sir.

Q. Where did the wine come from which you used for the mass?

A. From the parish.

61 Q. On that occasion, did you take the wine to the chapel?

A. On that occasion the wine was already sent to the chapel.

Q. Who was the person in charge in the chapel?

A. Capitan Blas.

Q. Do you know whether there is an elder brother in the chapel now?

A. Yes sir, when I preached in the chapel, I know that the brother in law of Father Juan Tinapay was elder brother.

Q. Who was elder brother at the time that you had charge of the parish?

A. I do not remember.

Q. How long were you in charge of this chapel?

A. About four months.

Q. Do you know who appointed the elder brother of the chapel?

A. I think he was elected by vote of the catholics, and the person thus elected took charge of the property.

Q. Did any ecclesiastic authority intervene in the election?

A. Yes, sir, Father Somera told me that he assisted.

Q. When your time as being in charge of the chapel, was around, to whom did you deliver the property?

A. To father Gregorio Lorenzo, to whom I delivered the books of the parish of Malabon.

Q. Can you describe those books which you turned over to Father Lorenzo?

A. The books of marriages, burials, baptism, deaths, and the inventory of the things of the chapel.

Q. In that inventory, does the chapel of Concepcion form part of the properties of the parish?

A. Yes sir.

Q. Do you remember the date on which you delivered those books to Father Lorenzo Gregorio?

A. I do not, but it appears from the books.

Q. Did father Lorenzo receive those books from you?

A. Yes sir.

62 Q. Also the book with the inventory?

A. I do not remember whether also the book of inventories, but I remember the entries.

Q. Through whom did you deliver the inventory-book?

A. Through that man Matias, who was senior sexton.

Q. And you saw that inventory at that time?

A. Yes sir, but I have not investigated its contents.

Q. Did you never open or investigate that inventory-book?

A. No sir.

Q. How many books formed the inventory?

A. I do not remember, because there was a man in charge, and I trusted him.

Q. Do you know the duties of the elder brother of the chapel of Concepcion?

A. Yes sir, the elder brother can do nothing in the chapel without consulting the catholic priest of the parish, who is his chief.

Q. The Capitan Blas was in charge, and at the same time elder brother when you took over the chapel?

A. He was not elder brother, but as my predecessor instructed me to confer with him, I did so, but he was not elder brother.

Q. Who designated the date for the town-fiesta.

A. The parish priest did, and therefore nothing could be done there without consulting him.

Q. Do you know any of the elder brothers who has consulted you during that period?

A. No sir, because I was not there at the time of the fair, and I had made all arrangements with Capitan Blas; but they could do nothing there without consulting the parish priest, because I know from personal experience that, when I was coadjutor at Sta. Cruz, I was compelled to ask the parish priest for permission to read mass there, although I am a catholic.

Q. Do you remember that the chapel at any time was in need of repairs?

63 Q. I have not seen anything, but formerly I heard that the earthquake of '82 destroyed the chapel, and many people have told me that the chapel was rebuilt; and Capitan Blas himself told me so and he himself has contributed the mayor part for its reconstruction.

Q. Who has purchased the ornaments which according to your testimony the chapel owns?

A. They have been bought out of the contributions of the catholics.

Q. How do you know that said contributions came from the catholics?

A. This must be supposed because the chapel is devoted to the worship of the A. R. C. church, and furthermore the contributors told me so.

Q. How is this contribution made? By contributing things or money?

A. Everybody is told what he has to do.

Q. Do you know that by personal experience?

A. No sir, this must be supposed.

Q. Then the contribution was in things?

A. Yes, in things.

Mr. ROHDE:

Q. Was it obligatory for the elder brother to be a catholic?

A. Yes sir.

Q. If they had presented a Moro, or a Jew to you as elder brother, what would you have told them?

A. It can not be, he must be of the A. R. C. church.

Q. Did any non-catholics vote?

A. No sir, they were not allowed to.

Mr. CRISOSTOMO:

Q. Do you know whether any non-christian Chinaman has contributed to the chapel?

A. I do not know, but it is possible that for the good purpose, or by reason of his prospective baptism, or for any good purpose of catholicism, such person has contributed.

64 Q. Were all the people during the former government A. R. C.?

A. Yes sir.

Q. And why was only the A. R. C. church known?

A. Because no other church appeared here, and if it did, it kept in hiding.

Q. What do you mean to say that it kept in hiding?

A. Yes sir, because under the former government there existed no freedom of religion.

CANDIDO DEL ROSARIO:

Q. Do you know the chapel of the Barrio Concepcion, Malabon?

A. Yes sir, because I was priest in that town.

Q. When?

A. During the last days of September, 1902, I arrived there.

Q. Have you held any services in the chapel of Concepcion?

A. No sir.

Q. Why not?

A. Because upon my arrival there the chapel was closed, that is to say that the Archbishop had ordered us, the priests not to read mass in that chapel without his consent.

Q. And was the consent given thereafter?

The question is withdrawn.

Q. Did you go to the chapel in order to hold service?

A. I went to the chapel of Concepcion, not precisely for the purpose of holding service of the A. R. C. church, but to prevent the Aglipayans from holding their service in the chapel.

Q. And did you succeed?

A. They attacked me at the principal altar, where I was protecting the "ara," because I refused to give way.

Q. When you were at the chapel that time, were there any ornaments of the A. R. C. church?

A. Yes sir, I saw ornaments for the purposes of reading a mass prepared on the table of the sexton.

Q. And the Aglipayans compelled you to leave the chapel?

Question withdrawn.

65 Q. What else happened to you in the chapel?

A. The 26th of November, 1902, I went personally to the chapel, decided, not to permit any Aglipayan priest to read mass in said chapel, as from certain residents of the barrio of Concepcion I had heard before that day, that some Aglipayan fathers had been invited to read mass in said chapel; that said fathers had promised to go and that they were going to read mass on that date. I sent

the news to the parish priest of Malabon, telling him that it was convenient, and even necessary to go there, in order to prevent the Aglipayans from entering there, or, at the least to protest against their abuse of the rights of the A. R. C. church.

The parish priest told me that, if I was willing, I might go and do what I thought best. Early in the morning of that 26th day, a resident of Concepcion told me that on that morning the Aglipayans were to read mass, and so I went there immediately, arriving at the sexton's room at about six o'clock a. m. I found nobody there, and waited in order to see whether anybody would come, and really, after a little while a gentleman came, who was unknown to me, and having exchanged the ordinary courtesies, he said that his name was Lorenzo Tuason, and that he was the brother of the elder brother of the chapel. I answered that I was the coadjutor of Tambobong and that I had come to prevent the intrusion of the Aglipayans. Shortly thereafter some Aglipayan priests arrived and one of them went to the table in order to put on the ornaments, but I objected and told him not to carry out his purpose of reading a mass because the chapel belonged to the A. R. C. church and that they had no right to the use of the same. After some discussion regarding this matter, and se-ing that they would not listen to my reasoning, I went to the principal altar, where Father Leonardo Tailo, a- A. R. C. priest was, who also had come to the chapel while I was there. We were in the center of the altar, protecting the stone called "ara", and I threatened that I would call the police, whereupon somebody
66 came up quick to the altar, in order to obtain the stone "ara", but I shoved him away and he left. But another person, without my knowledge, went behind Father Leonardo and tried to obtain the stone "ara". When I noticed this, I caught the stone with both hands, but could not tear it away from that man because some other people helped him, and that is the time that they abused me, beating and oppressing me, grasping me by the hands and by the neck, until at last I gave up the stone, not being able to resist the combined force and strength of the many who attacked me. And thereafter, a gentleman called Pascual Tiangco, told me that he would have me arrested because I appropriated things not belonging to me, that he was the lieutenant of police, and then he led me to the hall of the convent of Concepcion, near the jail, where I met another gentleman, who later appeared to be Santiago Quimson, municipal secretary, who in rough words told me that he would throw me into the cell, and would send me from there to Rizal, and from Rizal to Bilibid, while I only answered him that some day we would see whether that was true, and I told him that I did not care, and showed my willingness to enter the cell, the gates of which were wide open, whereupon they led me to the presidency.

Cross-examination of the defendants:

Q. Who was in charge of the chapel when you went there? and when you attempted to prevent the Aglipayans from reading mass?

A. I do not know who was in charge, but I know that the parish priest of Tambobong administered said chapel.

Q. Have you seen said priest administer the chapel?
A. I have not seen him administer it materially.
Q. What acts of administration have you seen the parish priest of Tambobong perform in this chapel?
A. I refer to the administration which he, as parish priest, has of the church or parish and of everything pertaining to the same.
Question withdrawn.
Q. Did the gates of the chapel and its convent have locks and keys?
A. I know that the gates have an iron lock inside, as to the
67 keys, I do not know.
Q. Have you ever read mass there before the occurrence which you just have stated?
A. No sir, because when I arrived in this town and took charge of my office as coadjutor, this chapel was closed by order of the Archbishop, as the parish priest told me.
Q. Do you know who closed the chapel, by order of the Archbishop?
A. When I say that the chapel was closed, I mean that it was not qualified to serve for the worshipping of the A. R. C. church.
Q. From whom did you know that the church was closed for catholic worshipping?
A. From the parish priest of Tambobong, who was then Father Lorenzo, who told me that the Archbishop did not want us to read mass in that chapel.
Q. You said that on that occasion you went there by order of the parish priest, why is it, that you waited there for others, almost provoking them, when it was your duty to close the chapel, so that nobody could enter?
A. In — first place I did not go there to provoke anybody, but I went to defend the rights of the A. R. C. church, whose right it is to prevent any act of those who attempt to use the chapel for purposes contrary to those of the A. R. C. church.
Q. Why then did you not close the door, instead of adopting the means referred — by you?
A. I did not lock the door of the vestry, which led to the porch of the convent, because said door was open, and I did not consider the advisability of closing that door or not; but I did close the doors of the chapel, until a man, unknown to me, prevented my doing so.
Q. Do you know who owns the stone "ara" which according to your testimony was upon the altar?
A. I believe that it must belong to the chapel of Concepcion, because in a chapel, well supplied like this or there never lacks anything necessary for the services of t... A. R. C. church.
68 Q. Then, that stone "ara" belongs to the chapel?
A. I believe, yes.
Q. How long have you been coadjutor of the parish of Tambobong?
A. Approximately two years.
Q. Can you say whether in the town of Tambobong there was any other chapel aside of the chapel of Concepcion?

A. Yes sir.

Q. Can you tell me whether these chapels have each their own piedra "ara?"

A. I know that the chapels of Flores and Duhat have their own "ara" stones.

Q. Aside of the chapels stated by you, the others have also their own "ara" stones?

A. Yes sir.

Q. You know that they are property of the chapels?

A. I believe so, because I know nothing to the contrary, and furthermore, because, if these chapels had not their own "ara" stone, they would be compelled to borrow them from the parishes.

Q. Then you are certain that those "ara" stones are the exclusive property of each chapel?

A. Yes sir, I believe so.

Q. If according to your belief, the parish priest of Tambobong is the administrator of the chapel of Concepcion, how is it, that he did not take to the town the "ara" stone which was on the altar of the chapel, but waited until those other persons came?

A. In those moments I thought that it was better to remain next to the principal altar where the "ara" stone was, so that the Aglipayan priests would find it impossible to read mass, and on the other hand hearsay has it that the Aglipayans read mass even without the "ara" stone.

Q. Do you know who paid for the "ara" stone of the chapel of Concepcion?

A. No sir.

Q. Do you know how that "ara" stone of the Concepcion
69 chapel was acquired?

A. No sir.

Q. Do you know whether the "ara" stone, and the other ornaments of the chapel of Concepcion are on the inventory of the parish of Tambobong?

A. I do not know it.

Q. Do you know whether the Aglipayans have read mass there before you went there on the 26th?

A. I do not know, I have not heard whether they have read mass there before that date.

Q. Do you know who paid for the erection of the chapel?

A. From hearsay I know that it has been erected by contributions from many A. R. catholics.

Q. Catholics of the town, or of the barrio?

A. I cannot say cathegorically from which towns or barrio the contributors are, as according to the common rumor not only the catholic residents of the town of Tambobong, but also those of other towns contributed.

Q. Do you know in what form the contributions were collected?

A. No sir.

BLAS MARCELO:

Q. Have you been elder brother of the chapel of Concepcion?

A. Yes sir.

Q. As such elder brother of the chapel, from whom did you receive your orders?
A. From the parish priest of Tambobong.
Q. Which were the duties of the elder brother?
A. To order the celebration of fiestas and to prepare the chapel.
Q. When were you elder brother?
A. In the year '81.
Q. Since when do you live in the barrio Concepcion?
A. I was born there.
Q. Tell us everything that you know regarding the chapel of Concepcion, its condition at the time of your childhood, and what happened later on.
70 A. First I saw that its roof was of Nipa, then it was changed to tile and later to sheet-iron; in '80 the chapel was destroyed by the earthquake, and Ariston Bernardo, the elder brother of the chapel that year, ordered its reconstruction, and after removing the ruins, he put in a new foundation up to the height of one stone above the surface of the ground; in '81 I was the elder brother of the chapel, and that year I erected the walls and finished them; thereafter Lucilo Paez was elected as elder brother, and he put in the seven joists and trestles, and when in '83 and '84 I was made municipal capitan, I had the cross beams of the roof put in place, on which the iron is fastened, and I could put on the iron roof because the iron for the roof of the chapel was donated by the Chinaman Tiaweo. Then other elder brothers followed without performing any work on the chapel, until Lorenzo Cayco was elected, who had the balustrade of the altar made, as well as the balustrade of the chorus and the railing of the gallery, and who furthermore repaired the principal altar and put the pulpit, the decoration of the principal altar and of the pulpit in place, all of which were donations of Bibiano Lim; Mamerto Soriano, who followed as elder brother, filled the foundation of the tower and his successor, Leuterio Villaruz had the uprights of the tower erected. Eulalio Francisco, who succeeded the former as elder brother had the roof put on and had the tower painted, and thereafter, Pascuala Francisco ordered the erection of the "beaterio," which nowadays is called the convent. Thereafter the same Pascuala Francisco ordered the completion of the lower part of the building at her own expense, and had the building later on enlarged up to 22 by 18 varas, while a grandson of the Chinaman Tong donated the roofing, and all timbers and iron necessary for said work. Then followed the elder brother Mateo Samson who ordered Hermogenes Ignacio to put in a stone staircase and a stone pit and part of the flooring. Then followed the elder brother Maximo Tablante, who resides at Angeles, and who finished the floors, windows and painting, while Maximo
71 Tablante donated the material for the painting. Now I will continue as to the ornaments, commencing with the tabernacle, which is a donation of Teodoro Gutierrez, who also donated the altar and the wooden steps leading up to the same; the 36 candelabers are a donation of the so-called brothers and sisters, and Rufina donated the marble floor of the principal altar. Chief Irang

Tambollo donated the silver-altar which is being used on the day of the fiesta of the Purisima Concepcion, while chief Tino donated the Gilt "acheros." The two small altars, on both sides of the principal altar were purchased at the expense of Maria Romana, and these altars were constructed by Hermogenes Ignacio. The two candlesticks of silver were donated by Fernando Raymundo, elder brother, and by Matias; the cross in the center by Impong Tinang Sara; the 4 pilasters which support the grove of the altar, were donated by Macaria Gatchalian, and the pilaster in the center of the convent is also donation of Macaria Gatchalian, as well as the brick-floor of the vestry and of the chapel from the principal altar to the door. The two joists of the chorus and the pilasters were donated by Pedro Camus and Modesto Valencia; Leotario Villaruz ordered the frame of the garret, the ceiling and painting of which was later on donated by the son of Dorong Tola of San Fernando. And the "fallo," consisting of 8 pilasters, or supports of silver, and gilt, were donated by Julian Roque. The so-called Isidro had the banks of the chapel made when he was elder brother, and Mariano Gutierres, also elder brother, had a confessional made and repaired the turret, staircase and windows, and Crispulo Gutierres donated new silver candlesticks, in order to replace the former ones, which had been lost at the time of the disturbance when the American troops landed; The silver niche, which is placed on the principal altar at the time of the fiesta, was donated by Impong Tinang Pallo, and Isacá donated the silver tabernacle; and the Chinaman Santos donated the corresponding atril. Lorenzo Impong Insa donated the dalmatica of best quality, which is being used on the fiesta of Concepcion;
72 and the gold wreath which is used as ornament of the Virgin on the day of the fiesta, has been donated by Capitan Piro of Navotas; the silver border, with 12 gold stars, and the sun and moon at the feet of the Virgin donation of Damiana Impong Damiana, Sr., of Concepcion; the silver pedestal used for the Virgin on festive days is from Irang Tabello, and is in her hands, because she redeemed it from the pawnshop, where it was pledged.

Q. Who pledged the silver pedestal of the Virgin?

A. The grandsons of the old Pilar, and Irang redeemed it, wherefore it is now in her hands; Martin Esguerra only donated the silver globe, and the garments, which are two, one for festive days, and the other when the Virgin is taken to the river, is donation of Pilar de San José of Navotas; The garment which the Virgin uses the 10th of December is donated by Leoncia Samson of Candaba; Ciriaco Bautista had the yard of the chapel made, as well as the walls which constitute the fence, and some others of those here present may have made donations, and if I have forgotten to mention them, I beg them to excuse it. And at the time that we had not everything necessary for the celebration of fiestas, we used to borrow the silver altar and the "acheros" from the parish church, as well as the sacerdotal ornaments. And brother Damaso Antonio has donated the cover of the Virgin's altar, with its gold fringes. And the silk curtain, which covers the entire altar is donation of Pedro Roque. And since my childhood I know that all of us who founded said chapel were Roman catholics.

Q. In which church or chapel have you heard your first masses as a child?

A. There, in the chapel of the Purisima Concepcion.

Q. Did your fathers hear mass in the same chapel?

A. They heard mass there and in S. Bartolome.

Q. And until what year did you continue to hear masses in that chapel?

A. From my childhood up to the year 1902, or rather until 2 years ago.

73 Q. How many of those contributors or donors whom you have enumerated, have died already?

A. Lucilo Paez, Isidro, Pedro Roque, Crispulo, Leuterio Villaruz, Ciriaco Bautista and I are still living out of the number of the elder brothers.

Q And who lives of the donors who were not elder brothers?

A. I remember now that of the elder brothers also Mateo Samson and Capitan Asiong are still living, the former being at Balanga, and the latter at Candaba, and of the donors others than elder brothers, I remember that the wife of Tiawco, the Chinaman Siat, Capitan Tonang, chief Mateo Samson are still living.

Q. Why did you cease hearing masses at the chapel, and did not continue attending to the divine service?

A. Because I have heard that Aglipay is reading masses there since three Novembers.

Cross-examination by defendants:

Q. Do you know who has now the things which you stated were donated?

A. When I intervened in the "Visita" I ordered the different things to be returned to the respective donors.

Q. And do you know who now possesses those donated objects?

A. I do not know.

Q. Do you know from personal knowledge everything that you have just stated as to the donated objects?

A. Yes sir, because I did the speaking.

Q. Were all the above objects received by the donors in funds, or in objects?

A. They were donated just as I have stated, and not in money.

Q. Do you know who has paid for the expenses of erecting this "Visita"?

A. Out of the contributions of the residents of Malabon, and out of the charity money of other contributors.

Q. Have you ever been in charge of the chapel?

A. Yes sir.

74 Q. State when you were in charge.

A. From the time of the disturbances with the Americans, the 10th day of May.

Q. Who has appointed you as agent of this chapel?

A. First Major William, and thereafter Father Juan Somera.

Q. Did they appoint you agent of the chapel at the same time?

A. Yes sir, the Father Somera arrived there later and remained there, appointing me agent.

Q. Who was elder brother then?

A. I believe Ciriaco Bautista.

Q. Who spoke to you aside from the Major and Father Somera about taking over the chapel?

A. Nobody.

Q. When you stayed in the convent, did you find anybody there or not?

A. No sir.

Q. How long were you living in the convent?

A. Less than one year.

Q. Aside from father Somera, have you lived in the convent with any other family?

A. Yes sir, there were many families.

Q. Please state who those persons were.

A. Damaso, Canuto Sanchez, Vicente, the son of Bilangco, and women who formed a commercial association.

Q. After you returned from the disturbances, did you have your house in Malabon?

A. No sir, it was destroyed by fire.

Q. What material was your house made of, before it was destroyed?

A. Of mixed material, *i. e.*, timber, cane and nipa.

Q. And why, or when did you leave the convent?

A. After less than a year we left the convent, leaving Capitan Canuto, because I had again a house.

Q. How long did Father Somero stay in the convent?

A. I do not remember.

75 Q. Do you know why Fatner Somera left the convent?

A. I do not.

Q. Who stayed in the convent after Father Somera left?

A. Capitan Canuto, Capitan Quito, Coles, Vicente.

Q. From the time that you left, did you cease to be the agent of the convent and chapel?

A. No sir.

Q. Do you know whether anybody has been in charge after you?

A. I do not know.

Mr. ROHDE:

Q. Did any persons other than A. R. catholics have the right to vote at the election of the elder brothers? during any of the years that you have lived in the barrio of Concepcion?

A. During my administration, not.

Q. During the years that you remember, could a person be elder brother, if he was not A. R. catholic?

A. No sir, only a A. R. catholic.

Mr. CRISOSTOMO:

Q. State whether or not in this barrio a brotherhood was founded of christian and non-christian chinamen?

A. Yes sir, and they pay the expenses during the evening before the fiesta.

Q. Is the chapel of the barrio of Concepcion authorized to also receive donations from these men who do not profess the A. R. C. religion?

A. Yes sir, everybody's donations were accepted.

Q. Have you ever collected contributions in the barrio for the fiesta?

A. Yes sir, accompanying the elder brothers, but when I was elder brother, I paid everything personally with exception of the music, which was donated.

Q. Do you remember to have collected in company with the elder brother contributions from non-christian chinamen or heathens?

A. Yes sir, on Escolta and Santo Cristo streets.

76 TOMAS LIMIANGKIN:

Q. Do you know the chapel of Concepcion?

A. Yes sir, since I arrived in the year 1884, as teacher of this town, I have been one of the contributors, with the intention that my contribution should be for this chapel and for the express use of the A. R. C. church; in second place, although we were contributors, we have no right to dispose what should be done in the interior of the chapel, the manner of blessing or the worshipping, without the intervention of the parish priest of the town, because the said barrio of Concepcion is not the possessor of said chapel, but the same is the property of the A. R. C. church.

Q. What kind of a chapel has it been during the 20 years that you have known it?

A. Chapel of the A. R. C. church.

Q. Has the worship of the A. R. C. church been going on in that chapel all those years?

A. Without interruption.

Q. Until when was there no interruption?

A. I do not remember the year, but it was the year when the two priests were abused in the chapel.

Cross-examination by the defendants:

Q. You spoke in the plural when you said that you had given away the ownership of the chapel?

A. I, for instance, and several catholics, like Blas Marcelo, Petrona Francisco and others, whom it is very difficult to enumerate.

Q. What did the contribution of yours to the chapel consist of?

A. I contributed money.

Q. How much?

A. I think the total of my contribution was about 50 pesos.

Q. Have you contributed all that at one time, or in several payments?

A. In several payments.

Q. To whom did you deliver that money?

A. I placed it into the box which was there in place for the contributions.

77 Q. Who was in charge of that box?

A. I do not know, but sometimes I heard that the elder brother was in charge of the contributions, and as I understand it, the elder brother was in charge of the box.

Q. Who was present when you placed your contribution in the box?

A. Nobody.

Q. Where was that box?

A. Within the "Visita."

Q. In what part of the "Visita"?

A. On the right side, and it was locked.

Q. Was the box towards the principal altar, or towards the door?

A. Near the altar.

Q. How large was the box?

A. About the size of an open hand.

Q. Do you know who kept the money of the box?

A. I was told that the elder brother kept it.

Q. Do you know who was the elder brother at the time that you contributed that money?

A. I do not remember.

ISABEL SANTOS:

Q. Is the barrio of Flores near the barrio of Concepcion?

A. Yes sir.

Q. Do you know the chapel of the barrio of Concepcion?

A. Yes sir.

Q. Since when, or how many years?

A. I have seen it there since my earliest childhood.

Q. Did you use to hear mass in that chapel?

A. Yes sir, since I was a child and when I was not married, and I only ceased to hear mass there since Aglipay got control of the chapel.

Q. Have you contributed anything to the maintenance of the chapel?

A. Yes sir.

Q. And have also your fathers heard mass in this chapel?

A. They showed me in that chapel how to attend to a mass.

Q. Tell the Court in which manner the elder brother of the
78 chapel of the barrio was elected.

A. The residents had a meeting in order to appoint the elder brother, and after his election a Te Deum was sung by the priest of the chapel.

Q. Where did they meet?

A. I have seen that the meeting was within the "Visita."

Q. State whether there were two or three elder brothers.

A. Three elder brothers were appointed, the first is in charge of one fiesta, and the next fiesta is prepared by the second brother, and at the same time a new meeting is being held for the election of a further elder brother in substitution of the brother who was in charge of the former fiesta, hence always three offices of elder brothers were always filled.

Q. Do you know the signatures of the paper which I exhibit to you?

A. Yes sir, some of them are residents of the barrio of Concepcion, others of the barrio of Flores and of Duhat, all of the town of Malabon.

Q. Has it been the custom of all the undersigned persons to attend mass in the chapel of the barrio of Concepcion?

A. As long as the chapel was in the hands of the catholics the undersigned used to hear mass there, but since it went into the hands of Aglipay, they have ceased going there.

Cross-examination by the defendants:

Q. Before the chapel passed into the hands of Aglipay, where did you usually hear mass?

A. Frequently in the "Visita."

Q. Was mass read there every day before the chapel passed into the hands of Aglipay?

A. Not every day.

Q. Do you know who paid for the masses which were read in the chapel before it passed into the hands of Aglipay?

A. I do not know, but whenever I wanted a mass read, I paid for it.

Q. Do you know who the owner of the chapel is?

A. Since my childhood I have seen that the A. R. C. church administered the same.

79 Q. Who administered the chapel for the A. R. C. church? Question withdrawn.

Q. Do you know how the A. R. C. church administered the chapel?

A. Before doing anything in the chapel, they had to pay a part to the priest.

Q. Who are those who give a part to the priest?

A. The brothers of each fiesta.

Q. How do you know that?

A. Because aside from the information which I have, I, as wife of the elder sexton, saw them in the convent.

Q. Do you know what those elder brothers asked the priest for?

A. I understand that every time that a fiesta was celebrated there, the elder brother accounted to the priest and also accounted for the repairs which were being made in the Visita.

Q. Have you seen or heard that?

A. Yes sir, I have seen and heard it.

Q. Can you state whom you have seen speaking about these matters?

A. I know some of them, for instance Capitan Blas and Capitan Sino, and others, who have died already.

Q. What year were you in the convent, when your husband was elder sexton?

A. From 66 to 68.

Q. Did you live there all that time?

A. I have lived there all that time, with exception of 68, when I went to live downstairs.

Q. Where did you have your house in Malabon at that time?

A. As I have stated, we lived in the convent, because at that time we had no house.

Q. Were masses read every Sunday and fiest- day in the chapel of Concepcion?

A. No sir.

Q. What is your husband's name?

A. Modesto Valencia.

80 Q. You said that all the signatures which appear in this document are true and genuine, how do you know that these signatures are really the signatures of the persons named in the document?

A. I was present when they signed it.

Q. Have you seen all the persons sign, who appear on that document?

A. Yes sir.

Q. Where did you sign that document?

A. In the convent of the Visita of Flores.

Q. Did all these persons sign at the same time?

A. No sir.

Q. How often did the subscribers go there to complete all the signatures?

A. I do not remember.

Q. What day, month and year was that document signed?

A. Last month.

Q. When did you sign the document?

A. He sent it to me to read it, and as I liked it, I signed.

Q. Do you speak or understand Spanish?

A. No sir, but he translated it to me in Tagalog.

Q. Who translated it in Tagalog to all the subscribers?

A. I do not know, because the Tagalog translation was attached to the document, but I had it read to me by a person of intelligence, and he told me that it was all right.

Q. Who was that man or intelligence who read the document to you?

A. Our priest Father Lino Cajili.

Q. Do you know personally all the persons who signed that document?

A. Yes, all of them.

Q. And all of them have signed in their own handwriting?

A. I have seen some of them sign it personally, but others signed at other times, and I did not see them.

Q. Do you know Diego Santiago?

A. He was not present.

Q. Do you know Evaristo Luna?

A. Yes sir.

81 Q. Did you see Evaristo Luna sign that document?

A. No sir.

Q. Can you state the names of those persons whom you saw sign the document?
A. Yes sir.
Q. State them.
A. I have only seen the first subscribers up to Valentin Santiago and Sinforoso Agapito inclusive.
Q. How did you get acquainted with all the signatures which appear in this document?
A. Yes sir, because I have read the entire document, and because I know all the subscribers by name.
Q. Do Diega Santiago and Evarista Luna know how to sign?
A. No sir, only the priest showed us.

Mr. Rohde offers the document in evidence as far as the subscribers are concerned who were identified by the witness. Exhibit "A."

Q. Do you know who was present when you signed that document?
A. Only Lino Cajili, the parish priest.

LAUREANA GAMBOA:

Q. Where do you reside?
A. Back of the visita of Concepcion.
Q. In what chapel have you been used to hear mass since your childhood?
A. When mass was being read in the chapel of Concepcion, I went there, but when no mass was read there, but in San Bartolome, I went to the latter place.
Q. And your fathers, where did they attend mass?
A. As my fathers heard mass only on Sunday and feasta-days, they went to San Bartolome.
Q. Have you contributed to the maintenance of the chapel of Concepcion?
A. When there was anything to be worked on the chapel, I contributed as much as I pleased.
82 Q. For how many years have you done so?
A. I do not remember, because every time that it was necessary to do anything for the chapel, and I cared to donate something, I did so.
Q. During many years?
A. Since I was able to, because when I was a child, we were poor.
Q. How old were you, when you became able to do so?
A. I was 25 years old, when I could donate.
Q. Since when did you cease to hear mass in the chapel?
A. Since it passed into the hands of Aglipay.

Cross-examination by the defendants:

Q. Do you remember the last date that a priest of the A. R. C. church read mass in the chapel before Aglipay obtained possession of the same?
A. Two years ago, more or less.

Q. You said that your fathers heard mass only Sun- and fiesta days in the church of San Bartolome; why did they not go the the chapel of Concepcion?

A. Because on Sundays and fiesta days, sometimes no mass was being read there.

Q. And why is it that on Sundays and fiesta days sometimes no mass was being read there?

A. I do not know the reason.

Q. Do you know whether or not the masses read in the chapel of Concepcion were paid for?

A. I do not know.

Q. What have you donated to the chapel since you became 25 years of age?

A. Every time that they made repairs, I donated One hundred cavanes of lime.

Q. How often do you remember that you donated One hundred cavanes of lime?

A. I do not remember.

Q. When did you make your last donation?

A. I do not remember.

Q. To whom did you deliver the lime?

83 A. I do not know because I sent it to the chapel, and I suppose that Capitan Blas received it.

Q. Do you remember that each time that you have made a donation——

Question withdrawn.

Q. Do you know how to sign?

A. Yes sir.

Q. Do you remember to have signed your name lately?

A. Yes sir.

Q. Would you know the document which you signed, if you saw it?

A. Yes sir.

Q. In what language is that document?

A. In Tagalog and in Spanish.

Q. Are those two documents separate or united?

A. They were united.

Q. Did you sign the document which was in Spanish?

A. Yes sir, and also the other in Tagalog.

Q. How many sheets do the documents contain?

A. I did not pay attention how many.

Q. Say whether you recognize this document, Exhibit "A".

A. The witness, after examining the document, says that she recognizes her signature and rubric as her own, and that the next signature is that of Isabel Tiongco, which appears on page 3 of the document.

Q. Where did you sign that document?

A. In the convent of San Bartolome.

Q. Do you remember the date on which you signed the document?

A. No sir.

Q. Is it about a year ago?
A. No sir.
Q. About a week?
A. More than a week.
Q. About two months?
A. One month, more or less.
Q. Why did you go to the convent in order to sign the document?
A. Because the parish priest, Father Lino Cajili called me in order to ask me whether I would appear as a witness, in order to take the visita away from Aglipay, and I answered affirmatively.

84 Q. And what did you do then?
A. He told me to sign the document which has been exhibited to me.
Q. Who was present when you signed that document?
A. Only the parish priest.
Q. Did you see anybody sign that document?
A. Nobody, because after I had signed it, I went away.
Q. Before you signed this document upon demand of the priest, have you seen other signatures in this document?
A. Y-s sir, there were other signatures, but I do not know of how many sheets the document consisted which I signed.
Q. At what time was it that the priest made you sign?
A. In the morning, at the same hour as it is now.
Q. Do you remember at least the day on which you signed it?
A. No.
Q. Do you remember whether it was on a feast or on an ordinary day?
A. Weekday.

BRIGIDA DE GUZMAN:

Q. Where is your home?
A. In the same place, barrio of Concepcion.
Q. In what church did you hear the first masses?
A. In San Bartolome.
Q. Have you not heard mass in the chapel of Concepcion?
A. When a mass was read there, I went.
Q. During how many years?
A. I do not remember.
Q. Since your childhood?
A. Yes sir, whenever there was mass read.
Q. Also your fathers?
A. I do not remember.
Q. Have you contributed to the maintenance and repairing of the chapel?
A. I gave whenever it was necessary to expend money and when somebody collected.

85 Cross-examination by defendants:

Q. Do you know how to sign?
A. Yes sir.
Q. Look at this document, Exhibit "A" and state whether you signed it.

A. I do not remember whether I did sign it.
Q. Do you remember whether every Sunday mass was read in the barrio of Concepcion?
A. I know that some Sundays yes, and others no.
Q. Do you know whether the Father who read mass there, was paid for it?
A. I do not know.

PETRONA FRANCISCO, resident of the barrio of Flores, Malabon:

Q. Do you know the chapel of the barrio of Concepcion?
A. Yes sir.
Q. Did you use to hear mass in that chapel?
A. Yes sir, before the chapel became schismatic.
Q. When did you commence to hear mass in that chapel?
A. Since my childhood I went there when they read mass in the chapel.
Q. Also your fathers?
A. Yes sir.
Q. Have you contributed to the maintenance and repairs of the chapel?
A. Yes sir.
Q. During how many years?
A. I do not remember.
Q. During many, or during a few years only?
A. From the time that they were building the chapel in '82, but I can not state it precisely.

Cross-examination by defendants:

Q. Do your fathers still live?
A. No, they have died already.
Q. How old were you when your fathers died?
A. I do not remember this moment.
Q. And how old were you when your mother died?
A. I was 30 years old at the time.
86 Q. What did your contributions or donations to the chapel consist of?
A. Money.
Q. Can you tell how much you have donated?
A. No sir.
Q. Much, or little?
A. From ten to twenty pesos every time that they collected.
Q. To whom did you deliver those contributions?
A. To Capitan Blas Marcelo, because he helped at the work of the chapel.
Q. Do you know how to sign?
A. Yes, a little.
Q. Do you remember having signed a document lately?
A. Yes sir.
Q. Could you recognize that document if you saw it?
A. Yes sir.

Q. In what language was the document?

A. There were two documents, one in Tagalog and one in Spanish, and they said that both were one and the same thing, or that they had the same contents.

Q. The document Exhibit "A" was shown the witness in order to state whether it is the same document to which she refers.

A. Yes sir, it is this document, because there is my name, Petrona Francisco, and mine is the first signature that appears on sheet 3.

Q. Where did you sign that document?

A. In my own house, which is the convent at Flores.

Q. At what hour did you sign the document?

A. I do not remember just now.

Q. At day time or at night time?

A. At day time.

Q. In the morning or in the evening?

A. I do not remember.

Q. Who handed the document to you?

A. Father Lino Cajili.

Q. Did he read the document to you, or not?

A. Yes, he did.

87 Q. Have you signed the document in Tagalog?

A. Yes sir, I have signed it.

Q. Who was present when you signed that document?

A. I do not remember.

Q. Do you remember how many people were present?

A. No, I do not remember.

Q. Aside from Father Lino Cajili, who told you to sign the document, was anybody else present?

A. There were several persons, but I do not remember.

Q. Was it a feast or week day that you signed that document?

A. I do not remember.

Q. When you signed the document, did you see already other signatures on the same?

A. Yes sir.

Q. Do you know of how many sheets the document consisted which they gave you to sign?

A. I do not remember.

Q. When you signed the document, were there any other persons who signed with you?

A. Yes sir, there were others, but I do not remember how many, not who they were.

Q. Do you know whether this document was signed in one single day?

A. I do not know sir, whether in one or in several days.

Q. Do you know Clotilde Romero?

A. Yes sir.

Q. Do you know whether she was present at the time that you signed the document?

A. She was not there.

Q. Do you know Florentina Santos?

A. Yes sir.

Q. Was she present when you signed this document?

A. I do not remember this moment whether she signed in my house.

Q. Do you know Isabel Tiongco?

A. Yes sir.

88 Q. Q. Do you remember whether she was one of the persons who were present at the time that you signed?

A. I do not remember just now.

Q. Q. Do you know Fructuosa Gongon?

A. Yes sir.

Q. Do you remember whether she was present when you signed the document?

A. I do not remember.

Q. Have you seen the last mentioned women sign the document?

A. I have not seen them sign, nor do I know whether or not they signed in my house.

Q. Is it not true that this document was signed in one single day at the convent of Flores?

A. I believe not, but I do not remember whether it was signed in one single day.

LEONCIA QUIMSON, resident of Concepcion, Malabon:

Q. Do you know the chapel of Concepcion?

A. Yes sir.

Q. Was it your custom to go and hear mass in that chapel?

A. Yes sir, but since Aglipay occupied it, I did not go any more.

Q. How many years have you heard mass in that chapel?

A. Some 51 years.

Q. Have you contributed to the maintenance and repairs of the chapel?

A. Yes sir.

Q. During many or during few years?

A. Each time that the chapel was in bad condition charity money was paid for the chapel, and each time I contributed.

Cross-examination by defendants:

Q. Do you remember how much you have contributed?

A. I do not remember.

Q. To whom did you give the contribution?

A. I paid it into the poor box which was handed around in order to collect the charity money.

Q. Do you remember who passed the poor box around?

89 A. Yes sir.

Q. State the name.

A. Many of them have already died.

Q. Of those, whom you know, does nobody live any more?

A. Nobody.

Q. Have your contributions always been in money?

A. Yes sir.

Q. Do you know whether or not the masses which were read in the chapel of Concepcion, were paid for?

A. Some times they were paid for, but others were gratuitous.

Q. How do you know that?
A. The priests of votes read the mass gratuitously.
Q. Have you know any of the priests who have read a mass there gratuitously?
A. I do not know them.
Q. Do you know how to sign?
A. Yes sir.
Q. Do you remember having signed any document lately?
A. Yes sir.
Q. Where and when was it signed?
A. In the convent of San Bartolome, I do not remember the date, but it was a week day.
Q. Was it during this month that you signed?
A. No sir.
Q. Do you remember what month it was?
A. I do not know, because the priest called for me because he knew that I was catholic, and he asked me whether I wanted to sign this document for the visita, and I said yes.
Q. And what did you do?
A. I signed.
Q. Would you know the document if you saw it?
A. Yes sir.
Q. In what language was the document made out?
A. In Tagalog and in Spanish, and both were of the same tenor.
90 Q. State whether or not the document to which you refer, is this same document, marked Exhibit "A," which I exhibit to you?
A. Yes sir, and this is my signature (designating the signature of Leoncia Quimson, following to Tomasa Quimson, sheet 3 of said document).
Q. Who was present when you signed the document?
A. Only the priest.
Q. When you signed, were there already other signatures on the document?
A. Yes sir.

VICTORIANO DE LEON, resident of Concepcion, Malabon:

Q. Since when do you know the chapel and visita of Concepcion?
A. Since my earliest childhood.
Q. Have you generally hear mass in said chapel?
A. Yes sir.
Q. Since when?
A. Since my earliest childhood I heard mass in said chapel, but since Aglipay on the 26th of November, 1902, took the chapel by force, I ceased going there.
Q. During that time, have you contributed to the support and repairs of the chapel?
A. Yes sir.

Cross-examination by defendants:

Q. Was mass read every day in that chapel before the 26th of November 1902?

A. No sir, sometimes no mass was read, but mostly it was.

Q. Even on week days?

A. Yes sir.

Q. Do you know whether or not the priests, who were reading mass there, were paid for it?

A. According to information, some of the priests read mass gratuitously, and as to the others, I do not know.

Q. Do you know who is the owner of the chapel of Concepcion?

91 A. It has no owner, because this chapel was erected and built for catholic worshipping, and all devote residents gave contributions, just like myself.

Q. How do you know that?

A. Because this is what I know.

Q. Is your intention the intention of the others?

A. What do I know of the others? I do not interfere with the others.

Q. Have you given contributions?

A. I have already stated that I gave money to my wife for this chapel, because my mother in law had the custom to purchase and donate wine and candles to this chapel.

Q. Do you remember how much your mother in law gave in this manner?

A. That I do not remember.

Q. Do you remember having signed any document?

A. Yes sir.

Q. What document?

A. It is a document in which we, the catholics, express that we do not allow that any schismatics take possession of the chapel.

Q. Would you know the document if you saw it?

A. Yes sir.

Q. Where did you sign that document?

A. In the convent of the visita at Flores.

Q. Do you remember the day, month and year?

A. No sir, but according to my judgment in or before this month.

Q. Who made you sign that document?

A. I went to the convent one afternoon, and there I found betle nut on the table, and then a certain Dionisio Aquino came up and said: Please read this document, so that the other persons present here may also understand it, because it is in Tagalog and Spanish.

Q. Who was present when you signed this document?

A. Many persons, but I only know that man Dionisio and an old man whom I know by name.

Q. Is this the document to which you refer? (Exhibiting to him Exhibit "A").

92 A. Yes sir.

Q. What is your signature there?

A. Here is my signature, on sheet 2 of the document, right next to the signature of Blas Basay.
Q. At what time did you sign the document?
A. In the afternoon.
Q. On a week or fiesta day?
A. I do not remember .
Q. How many persons more or less were present there when you signed the document?
A. Five or six persons.
Q. Did those five or six persons sign the document with you?
A. No, what I know is that I took the pen and signed, and then I left and do not know what the rest did.
Q. Do you know Lorenzo Paz?
A. Yes sir.
Q. Do you know Cleto Ignacio?
A. Yes sir.
Q. Do you remember whether you were present when he signed this document?
A. I do not remember.
Q. Did Dionisio sign this document with you?
A. No sir.

Mr. ROHDE:

Q. Who was entitled to vote at the election of the elder brother?
A. The former brothers were entitled to vote.
Q. And who else?
A. The most prominent residents.
Q. Was the priest of Malabon present at the elections?
A. Sometimes personally, or represented by a deputy.
Q. What was the character of the priest or his delegate during the election?
A. He was president.

93 Cross-examination:

Q. Did the priest or his deputy always preside the meeting?
A. I know that he did.
Q. Who used to be the deputy of the priest as president of the meeting ?
A. I am only informed that it was Father Roman Santa Maria, Father Miguel Amplil, Father Prudencio Herrera and Mariano Santos.
Q. Where were you born in the town of Tambobong?
A. In the heart of the town.
Q. Near San Bartolome church or near Concepcion chapel?
A. Near San Bartolome, but when I got married in 88, I moved near to the chapel of Concepcion.
Q. And before changing your residence to Concepcion, how is it that you used to hear mass at Concepcion and not at San Bartolome?
A. Because it occurred to me, and I went to attend mass wherever it occurred to me.
Q. Even on week days you went to attend mass at Concepcion?
A. Yes sir.

DIONISIO AQUINO, resident of Concepcion, Malabon:

Q. Have you used to attend mass in the chapel of Concepcion?
A. When there is mass read, yes sir.
Q. During how many years?
A. From my childhood up to 1902.
Q. Have you contributed to the support and repairs of the chapel during those years?
A. There was a box in the interior of the visita, and I gave little, or small sums of money after the visita had been built.

Cross-examination by defendants:

Q. Do you know what that contribution was for?
A. According to my information it was for the necessities of the chapel in religious matters?
Q. Do you know how to sign?
A. Yes sir.
Q. Are you a grandchild of the so-called Francisca?
94 A. Yes sir.
Q. Do you know whether your grand mother has donated anything to the chapel of Concepcion?
A. I do not know of a donation, but I know that the Cibary is her property, because after its use she takes it home with her.
Q. Where is the Cibary now?
A. In our house.
Q. Who took it there from the chapel?
A. It was not taken away from the chapel, but it was brought to our house.
Q. Why did it not remain in the chapel, but was brought to your house? Who is its real owner?
A. I do not know, but my father knows.
Q. Do you remember having signed some document lately?
A. Yes sir.
Q. Where and at what hour, day, month and year did you sign that document?
A. In the convent of Flores, within this month, in the afternoon, but I do not remember whether it was a week or fiest day.
Q. Who requested you to sign that document?
A. Because I saw some parties there reading that document; so I also read it, and thereupon signed it.
Q. In what language was that document?
A. In Tagalog and in Spanish.
Q. Did you sign both documents?
A. Yes sir.
Q. Who was present when you signed those documents?
A. Victoriano de Leon, Cleto Ignacio and others, whom I did not know.
Q. Did Victoriano de Leon and Cleto Ignacio sign with you?
A. I do not remember.
Q. Do you know who is the agent who collects those signatures?
A. What I heard there, was that Father Cajili had taken the documents there.

Q. Do you know to whom he delivered the documents in the con-nt?

A. I do not know.

Q. And after, or before you signed it, did any other person offer the documents for the same purpose?

A. No sir.

Q. Is this document, Exhibit "A" the same to which you refer?

A. Yes sir, here is my signature, designating the signature which ppears under the name of Dionisio Aquino on sheet 2, over, of the me document.

Q. Do you know the reason why the document was signed?

A. Yes sir.

Q. State the reason.

A. The reason was to insist that only catholic priests might read ass in this chapel.

Defense.

LUCINO PAEZ, resident of Concepcion, Malabon:

Q. Since when are you blind?

A. Since 1900, although at that time I still could see a little.

Q. Have you ever been elder brother of the chapel of Concepcion?

A. Yes sir, in '82.

Q. Who appointed you as elder brother?

A. The principal people of the barrio.

Q. In what manner were you appointed by the most important eople of the barrio?

A. By chance.

Q. Who presided the election?

A. I remember that Capitan Mariano Panganiban or Macario anganiban.

Q. Did any other person prrside the election aside of Capitan Mariano Panganiban?

A. No sir.

Q. Did the parish priest of Tambobong not assist at the election?

A. No sir.

Q. Do you know whether the parish priest of Tambobong assisted t other elections?

A. Some times yes, but not the parish priest, but a priest who was paid for his trouble.

Q. Do you know who is the owner of this visita of Concepcion?

A. As far as I know, the barrio, because the barrio pays 96 everything.

Q. What expenses are paid by the barrio?

A. The repairs of the chapel were paid from the charity money.

Q. Do you know whether there are keys to the doors of the chapel?

A. The elder brother administers the chapel, like I did.

Q. Do you know who prepares the fiest of the barrio of Concep-cion?

A. The board of principal residents, and thereafter they apply

to the civil government for a license, and after the license is obtained, the fiesta is celebrated.

Q. Do you know whether the parish priest of Tambobong intervenes in the administration of the visita, particularly in the fiesta of the barrio?

A. The parish priest has nothing to do with this visita, he only is informed by the elder brother who pays him the dues for the mass.

Q. Do you know whether the fixtures of the visita are contained in the inventory of the church, or in the inventory of the visita of Concepcion?

A. In the books of the Visita, yes, but not in the books of the parish.

Q. Do you know whether the parish priest can compel the people of the barrio to celebrate their fiesta in the visita of Concepcion against their will?

A. No, he cannot.

Q. Do you remember having donated any object to the chapel?

A. As elder brother I donated twenty pesos.

Q. With what intention did you donate that sum?

A. With the intention that the visita should be erected so that the residents of the barrio might worship God.

Q. Do you remember whether the visita of Concepcion ever had a chaplain?

A. Yes sir.

Q. Who paid the chaplain?

A. The residents of the barrio paid him; this was at the time of the revolution against Spain.

Q. Who sent you that chaplain?

97 A. He was called by the barrio.

Q. With whose permission could you appoint a chaplain?

A. By the right of the barrio, because the barrio paid the salary of the chaplain.

Q. Do you know whether or not this chapel has all the ornaments necessary for reading a mass?

A. Yes sir.

Q. Do you know whether the chapel has vestments?

A. Yes sir.

Q. Do you know how the chapel obtained the vestments?

A. I do not know, but I do know that each resident gave something to the visita.

Q. Do you know whether there exists any brotherhood of faithful christians who expend money for the visita?

A. In this chapel there are chinamen who concur on fiesta days, following the procession, whether they are baptized or not.

Q. What did the non-christians spend?

A. The non-christians pay for their candles, and during the novenary of masses they give a certain amount to the elder brother for the mass which they order read there.

Q. Have you seen those chinamen worship within the chapel?

A. I have seen them enter there in the afternoons, and praying on their knees.

Q. Are those praying chinamen christians or non-christians?
A. Of both kinds.
Q. Do certain devo-*te* people light candles in the chapel?
A. Yes sir.
Q. Who withdraws the rests of the candles?
A. The elder brother, who sold them, increasing with their proceeds the funds of the chapel on fiesta days.
Q. Did the parish priest not intervene in that sale of the candle rests?
A. No sir.
Q. Do you know whether any priest has seen the worshipping of the non-christians within the chapel?
98 A. I believe yes, because almost *any* all hours they went to the chapel.
Q. Do you know Capitan Blas Marcelo?
A. Yes sir, I followed him as elder brother.
Q. Has the chapel agent aside of the elder brother?
A. Yes sir, the elder brother appoints a salaried agent.
Q. Who pays for the salary of the agent?
A. He is paid out of the charity money of the visita.
Q. Do you know to whom the elder brother accounted for the receipts and expenditures of each fiesta?
A. Whenever the time came for the election of new brothers, the former brothers accounted to the newly elected ones.
Q. Were masses read frequently in that chapel?
A. Whenever somebody orders a mass read and pays for it.
Q. Do you remember that ever any priest or the parish priest of Tambobong has read a mass there gratuitously?
A. I can not answer that question.

Cross-examination by plaintiffs:

Q. How do you know that some of the chinamen who walked in the procession, were non-christians?
A. Because they are residents of the barrio and have a store in the same.
Q. They certainly were men who were about to be baptized?
A. I do not know, but it is certain that there are still certain chinamen who up to date have refused to be baptized.
Q. But nevertheless they went to church that time in order to pray?
A. Yes sir.
Q. When you were elder brother of the chapel, were you A. R. catholic?
A. I only adored God and tried to appear to be a A. R. catholic by reason of the compulsion of the government.
Q. What religion did you profess at the time in the interior of your heart?
A. To love God and my brethren.
Q. The God of the A. R. C. church, or a God of what religion?
A. The God whom my fathers have told me, the invisible God.

99 Q. Were your fathers A. R. catholics?
A. I believe they professed the same faith as I.
Q. Are you meaning to say that your fathers were not A. R. catholics?

The question is withdrawn.

Q. Did your fathers take you to attend mass sometimes?
A. No sir, because since my childhood I was separated from my fathers.
Q. Did your fathers use to hear mass in that chapel?
A. Sometimes yes, and other times no.

ISIDORO ESTANISLAO, resident of Concepcion, Malabon:

Q. Do you know the chapel of Concepcion?
A. Yes sir.
Q. Have you ever been elder brother of that chapel?
A. Yes sir.
Q. In what year?
A. In '93.
Q. Who appointed you elder brother of the visita?
A. The former brothers.
Q. In what manner was the elder brother elected?
A. By means of votation of the former brothers.
Q. Do you know the duties of a brother in that chapel?
A. The elder brother administers the fixtures of the visita, has the key of the box in the interior of the same, has charge of the contributions paid by the residents of the barrio, orders the masses, because no priest can read mass in the visita without first consulting the elder brother of the chapel, and he received two pesos and twenty five cents.
Q. Who is directly in charge of the funds of the chapel?
A. The brother.
Q. To whom did the brother account for the expenses and receipts?
A. To the former brothers.
Q. Did the elder brother not account of those funds to the parish priest of Tambobong?
A. The priest had nothing to do in this visita.
Q. Who prepared the fiest of the barrio?
100 A. That is matter of the brother, and he only asks the priest how much the dues are for the masses and sermons which are read.
Q. Where cam- the money from which was expended in the fiest days?
A. From the contributions of the barrio.
Q. If the barrio did not care to celebrate the fiest of the visita, could the priest compel them to do so?
A. No sir.
Q. Why not?
A. On account of the expense which is furnished by the barrio.
Q. Do you know of the existence of any brotherhood of non-christians, who spend money and adorn the interior of the chapel?

A. Yes sir, there are many, and when I was elder brother, and went and collected from the Chinamen, and many of them entered the chapel during the afternoons.

Q. Have you seen the worship and the rites of the non-christians in the chapel?

A. I have seen the Chinamen on their knees with two candles and praying just as we adore Santiago.

Q. Does anybody place candles in the chapel?

A. Everybody, including the Chinamen.

Q. And at the time that you were elder brother, what did you do with the ends of the candles which had been lit?

A. I sold them, and the proceeds were used for the expenses of the fiest.

Q. Do you know whether ever a priest or the parish priest of Tambobong has read any mass in that chapel gratuitously, particularly when you were elder brother?

A. I do not know, but at my time nobody was allowed to read a mass there without my consent.

Q. Who is the owner of that chapel?

A. Since my childhood I know that the administrator of the visita is its owner.

Q. Has the chapel all the ornaments necessary for the sacred sacrifice of the mass?

101 A. Yes sir, everything complete.

Q. Who has paid for those ornaments?

A. The two curtains in the upper part of the two small altars, are from me, the *for* banks of tindalo and guijo wood are mine, and I donated them to the Virgin and for the use of those who cared to go there.

Q. Who presided the election when you were chosen as elder brother?

A. Then the gobernadorcillo Pedro Jason.

Cross-examination by plaintiffs:

Q. What religion did you profess when you were elder brother?

A. I was A. R. catholic.

Q. Did private parties have the right to pay for masses in that chapel?

A. Yes sir, they could, and accounted for it to the elder brother, or to me when I held that office.

Q. Could you deny them the right to pay for a mass in that chapel?

A. The elder brother could prevent the reading of masses, and when the applicants belonged to the barrio, and when there was no impediment or ground, he could, because sometimes the visita did not have certain objects necessary for the mass, and then the elder brother could deny the mass, as he also had the key.

Q. That is to say then that you, because you had the key, could prevent the reading of masses?

A. Not only by reason of the key could I prevent it, but because it was a right of the elder brother.

Q. Has the case ever occurred that the elder brother prevented the reading of a mass?

A. During the time that I was elder brother it happened only once that I prevented it.

Q. And why did you disallow the mass that time?

A. Because there was no wine.

Q. That was the reason that you disallowed the mass?

A. Yes sir.

Q. And what did the father say to that?

102 A. Nothing.

Q. And could he read the mass then?

A. No priest can read a mass without wine.

Q. How do you know that you had the right to disallow a mass?

A. Because I have asked the former brothers.

Q. And what did they tell you?

A. They told me that when the priests wanted to read a mass there, they had to account for it to the brother, and if the brother consents, they might read the mass, but if not, then they could do what they pleased.

Q. Who are the brothers who told you so?

A. The elder brothers of great age, and who are now dead, cabeza Inso and Into.

Q. You did not ask the elder brother whose place you took?

A. No sir, I did not ask him.

Q. And those two gentlemen whom you asked, when were they elder brothers?

A. Some fifteen years ago.

Q. Since now or since then?

A. Since the time that I was elder brother.

Q. You did not ask about that any other person?

A. No sir.

SAMUEL TUASON, resident of S. Fernando, Pampanga:

Q. Where were you born?

A. In Tambobong.

Q. How old were you when you left Tambobong?

A. I did not leave, I only travel to S. Fernando.

Q. Do you know the chapel of Concepcion of Tambobong?

A. Very much.

Q. Have you ever been elder brother of that chapel?

A. Yes sir, in the year 1902.

Q. Was the fiest- celebrated that year?

A. Yes sir.

103 Q. Was mass read in that chapel that year?

A. Yes sir.

Q. Who was the priest who read mass on that occasion?

A. Priest of the independent church.

Q. When did the chapel pass into the hands of the independent church?

A. The fiest- of that year 1902 was nearing at the time.

Q. And in former years, what priests read the mass in that chapel?

A. Roman priests.

Q. And why did in that particular year roman priests not read the mass?

A. When I was elected as elder brother just before the time of the fiest-, the entire barrio loudly claimed that the mass of the fiest- be read by the roman priest, whose name I do not remember, but he was the predecessor of Father Lino, and he was asked to hold service, which he refused, demanding the delivery of the keys of the visita, with a document to the effect that the possession of the visita was being delivered to him. But the barrio objected and applied to the fathers of the independent church, whereupon the Bishop Maximo came.

Q. Do you know how long before that date on which you asked the roman priest to hold service, no mass had been read there?

A. I do not remember because I was absent, but I suppose that masses were being read.

Q. Do you know who is the owner of that chapel?

A. The barrio, and in its representation the elder brother.

Q. What does "the barrio" mean?

A. When I say "the barrio," I mean to say the majority of the principal residents and contributors of the barrio.

Q. How do you know that the barrio is the owner of the visita?

A. Because it is being maintained by the barrio.

Q. Who elected you as elder brother of the visita?

A. The barrio by vote.

Q. Where were the expenses for the support of the chapel obtained?

A. From the contributions under the custody of the elder brother.

Q. Who prepared the fiest- of the barrio?

A. The elder brother with the consent of the barrio.

104 Q. Was it necessary to obtain a permit to read mass there?

A. A permit was obtained from the government.

Q. What is the intervention to which the parish priest of Tambobong is entitled in this chapel?

A. He has no intervention in the elections, and if any priest goes there, it is only for the purpose of solemnizing the service, and the priest is being paid for it.

Q. Aside from the permit which was to be obtained from the government, was it necessary to obtain a permit from the parish priest?

A. No sir, there was no necessity.

Q. Q. Who presided the elections?

A. I do not know; but the last time I saw that it was presided by the municipal presidente, perhaps for reasons of safety.

Q. Who has the key to the chapel?

A. The elder brother.

Q. Do you know since when the elder brothers had the key?

A. Since immemorial time.

Q. Has the chapel all the ornaments necessary for the reading of a high-mass?

A. Yes sir.
Q. Also the necessary vestment?
A. Yes sir, the vestment is at the house, and on fiest- days it was taken to the chapel.
Q. Why is the vestment kept at the house?
A. It being a donation made by my mother, I now keep it as her heir.
Q. Who is the owner of the chapel?
A. I.
Q. Since when has the chapel that vestment of its own?
A. Since thirty years.
Q. Do you know with what money your mother had the vestment made?
A. With her own money.
Q. Do you know whether the ornaments of the chapel form a part of the inventory of the parish or visita of Tambobong?
A. The- appear in the inventory of the visita of Tambobong.
105 Q. Do you know anything of the masses which were read in that chapel before the existence of the Aglipay church, and whether they were paid for?
A. Yes sir, they were paid for, and I say that they were paid for because the price was not stable, and against one peso that we paid formerly, we lately had to pay two and a half.
Q. Do you know whether before the advent of the Alipayans, there has been any mass read gratuitously?
A. Never.
Q. Who administers directly the chapel?
A. The elder brother.
Q. Has the parish priest no intervention in the administration?
A. None.

Cross-examination by plaintiffs:

Q. What was your religion at the time that you were elder brother?
A. The religion of Christ.
Q. And what religion do you profess actually?
A. The same.
Q. Do you not belong to the independent church?
A. I belong to all of them to the point that I believe in Christ.
Q. When you were elected, have you stated publicly that you were not A. R. catholic?
A. I do not know whether such was the inference from my words, but I have told nobody that I am not A. R. catholic.
Q. Af-er the fiest- referred to by you, did you declare publicly that you were no A. R. catholic?
A. Nobody asked me.
Q. But now, are you not a member of the independent church?
A. I belong to everything.

MARTIN ESGUERRA, resident of Concepcion, Malabon:

Q. Where were you born?
A. In Malabon.
Q. Do you know the barrio Concepcion?
A. Yes sir.
106 Q. Have you ever been elder brother of the barrio of Concepcion?
A. Yes sir.
Q. Who elected you elder brother?
A. The former brothers and the principal residents of the barrio.
Q. Who had charge of the fiesta?
A. The residents of the barrio themselves, represented by the elder brother.
Q. Was any licence from authorities or entities necessary?
A. At my time not, sir, and that was in the year 1901.
Q. And did you not apply to the parish priest for a permit?
A. Neither.
Q. Do you know who owns the chapel of Concepcion?
A. The barrio owns it.
Q. Why do you know that the barrio is the owner?
A. Because the barrio has paid for its erection, repairs and fixtures.
Q. Do you know the purpose for which the residents of the barrio erected the visita?
A. Perhaps in order to have a building where they might adore God.
Q. Do you know whether the parish priest of Tambobong intervened in the administration of the visita?
A. No sir.
Q. *How* has the key of the chapel?
A. The elder brother.
Q. Has the elder brother always had it?
A. At least at my time, always.
Q. Do you know whether the chapel of Conception has had its own chapel?
A. Yes sir, at a certain time.
Q. Do you know who called him?
A. The residents of the barrio, and they themselves paid his salary.
Q. Did the barrio solicit the chaplain with the consent of the priest of Tambobong?
A. Not that I know of.
Q. Do you know whether or not the masses read in the chapel always were paid for?
107 A. Paid for.
Q. Do you know of any parishioner or coadjutor who has read mass there gratuitously?
A. Not to my knowledge.
Q. Did the devote people place candles in the chapel?
A. Yes sir.
Q. Who saved the candles after the had been lit?

A. The employee of the elder brother, who was paid by the latter.

Q. What did the elder brother do with the candle-rests?

A. The proceeds were used to pay the expenses of the fiesta and other necessities more.

Q. Who presides the election of the elder brothers?

A. The Gobernadorcillo, or his deputy.

Q. Do the fixtures and ornaments of the chapel appear in the inventory of Tamboobong?

A. No sir.

Q. Where do they appear?

A. In the inventory of the chapel.

Q. Who is in charge of the objects belonging to the chapel?

A. The elder brother.

Q. Do you know whether there exists any brotherhood of non-christians, who adore in that chapel?

A. What I know, is that there exists a brotherhood of Chinamen, some of whom are baptized, and others not.

Q. What did that brotherhood do in regard to the chapel?

A. This brotherhood assisted to pay the expenses of the fiest- of the Virgin of Concepcion.

Cross-examination by plaintiffs:

Q. When you were elected elder brother, did you profess the A. R. C. religion?

A. I was elected in 1898, and then I professed the religion of Christ.

Q. The christian religion, which is professed by the A. R. C. church?

A. No sir, even though I seemed to profess that church, I told nobody the religion of my heart.

108 Q. Did you perform your services in that chapel?

A. For at least 6 months I have non been there.

Q. Did you go to the chapel for religious purposes?

A. Yes sir, to worship God in accordance with my religion, which is not the A. R. religion.

Mr. Crisostomo:

Q. Who possesses that chapel now, or what kind of priest reads mass there?

A. The Aglipayans.

Q. Since when do the Aglipayans read masses there?

A. Since November, 1902, if I remember right.

Q. Do you know why the Aglipayans could read masses there?

A. According to the rumors, and as far as the elder brother says, he went to see the Suprerior of the Aglipayans, their Maximo, asking him to have mass read there on the day of the fiesta of the Purisima Concepcion, because the priests refused to do so.

Mr. Rohde:

Q. How do you know that the goods of the chapel are not enumerated in the inventory of the parish of Malabon?

A. I believe that they should not be enumerated there, because they do not belong to the parish.

SIMON BERNARDO, Resident of Malabon:

Q. Do you know the chapel of the barrio of Concepcion?
A. Yes sir.
Q. Since when do you know that chapel?
A. Since my childhood.
Q. Do you know who the owner of the chapel is.
A. According to hearsay, before 80, *i. e.* the former chapel, which was erected by the residents of the barrio, belongs to the barrio, and I am certain that the new chapel, erected in 81 was built at the expense of the barrio.
Q. Why do you know that the new chapel was built at the expense of the barrio?
A. Because at that time, in 80, my father Ariston Bernardo
100 was elder brother, and I know that the barrio paid for the erection, because the residents of the barrio came to see my father, instructing him to beg contributions for the building of the chapel, and my father asked the civil government for a permit to build this chapel.
Q. Do you know who had the key to the chapel since the time that your father was elder brother?
A. Always the actual elder brother has the key to the visita.
Q. Have the elder brothers always had the keys?
A. Yes sir.
Q. Who is in charge of the fiesta?
A. The barrio, represented by the elder brother.
Q. Was it necessary to obtain a license for the fiesta?
A. Yes sir, from the civil government.
Q. Do you know whether the priest of the parish was asked regarding the celebration of masses or fiestas?
A. He was not asked.
Q. Do you know whether or not the masses that were read in that chapel were paid for?
A. Yes sir, they were paid for.
Q. Who paid for them?
A. The people by contributing during the masses of the novenary of the fiesta, benefactors, and the elder brother.
Q. Do you know whether the parish priest of Tambobong had any intervention in the administration of the chapel?
A. None whatever.

PEDRO ROQUE, resident of the barrio of Flores, Malabon:

Q. Do you know the chapel of the barrio of Concepcion?
A. Yes sir.
Q. Since when have you known that chapel?
A. From my childhood to the time that I was elder brother, and up to now.
Q. What year were you elected elder brother of that chapel?
A. July 10, 1894.

Q. Who elected you?

110 A. The former brothers and the principal residents.

Q. Do you know who is the true owner of the chapel?

A. The residents of the barrio Concepcion.

Q. How do you know that the residents of the barrio are the owners?

A. Because the visita exists by the charity of the rich and poor of the barrio.

Q. Who is in charge of the fiest- of the barrio?

A. The elder brother.

Q. What are the requisites necessary to celebrate the fiest- of the barrio?

A. A meeting of the principal residents of the barrio is called, and then the civil government is being asked for a permit.

Q. And no license was solicited from the parish priest of Tambobong?

—. No sir.

Q. Has the visita funds of its own?

A. Yes sir.

Q. Who is in charge of the funds of the visita?

A. The elder brother.

Q. Does the parish priest of Tambobong intervene in the administration of the chapel?

A. No sir.

Q. Does the chapel have its own ornaments?

A. Yes sir.

Q. To whom did the elder brother account for the manner in which he spent the contributions for the feast?

A. He accounted to the nex- elder brother at the time of his election.

Q. Who presided the election board?

A. The gobernadorcillo.

Q. Do you know whether or not the masses read in that chapel were paid for?

A. They were paid for.

Q. Do you know whether the priest, or coadjutor or any clergyman ever read a mass there gratuitously?

A. At the time that I was elder brother, all masses were paid for.

111 Q. Do you know whether or not the ornaments and the fixtures of the visita appear in the inventory of the parish of Tambobong?

A. No sir.

Cross-examination by plaintiffs:

Q. How do you know that they do not appear in the inventory of the parish of Tambobong?

A. Because we have never delivered them, nor a list of the same.

Q. Do you know that nobody has done so?

A. Yes sir.

Q. How can you know what other people are doing?

A. I say so, because that is exactly what I have seen all former brothers do.

Q. Have you asked all those elder brothers?

A. Yes sir.

Q. And what did they tell you?

A. They told me that the fixtures and ornaments belonged to the chapel.

Q. Did they also tell you that they delivered no inventory or list of the same to the parish?

A. Yes sir.

Q. How many elder brothers did tell you that?

A. Three, and others whom I do not remember.

Q. On what occasion did they tell you these things?

A. I have asked them in a meeting, so that my successors might know.

Q. Did the parish priest of Tambobong read mass in that chapel every day?

A. When he was paid for, yes.

Q. Did they pay him almost daily, so that there was almost a daily mass read?

A. Sometimes there was mass.

Q. How often every week?

A. Once or twice each week.

Q. Did other priests read masses there with the permission of the parish priest of Tambobong?

A. Without the consent of the elder brother, no sir.

112 Q. Did the priest of Tambobong alone read mass there?

A. No sir, any priest to whom a devo-te persons gives charity money.

Q. Could mass be read there without the permission of the parishioner?

A. I do not know.

PAULO RODRIQUEZ, resident of Concepcion, Malabon:

Q. How old are you?

A. I think I am about 55 years old.

Q. Do you know the visita of the barrio of Concepcion?

A. Yes sir.

Q. Who is in possession of that visita?

A. The elder brother of the visita.

Q. Who is the lawful owner of the visita?

A. The barrio of Concepcion.

Q. How do you know that?

A. Because the money invested in the visita has been collected from the barrio.

Q. Do you know who ordered the visita to be built?

A. Ariston Bernardo was the first who ordered the erection of the visita.

Q. What year did said Ariston Bernardo order the erection?

A. I do not remember the date.

Q. Who is that Ariston Bernardo?

A. The elder brother.

Q. Do you know who worked on the visita?

A. I do not know, but I worked on the sky light, the doors and windows.

Q. Do you know where the materials came from which were employed in the work?

A. I do not know, but I know that my part was the finishing of the skylight, windows and one door.

Q. Who furnished the material that was used for the work?

A. I do not know.

Q. Did you personally finish the skylight, the windows and door?

A. Capitan Blas ordered to do the work and asked me for the bill.

Q. How much was your bill?

A. I think some seventy pesos.

113 Q. What was your intention when you delivered those seventy pesos to Capitan Blas?

A. My intention was that the money should aid in the termination of the visita and that the visita should be a place where the people of the barrio might worship.

Q. State whether you helped with your personal work in the termination of the visita?

A. Yes sir, when Capitan Blas ordered us to work, I did work.

Q. Have you seen the material that was employed in the work?

A. Yes sir.

Q. Has all the material that you have seen there, been employed in the termination of the visita?

A. I know that, when Capitan Blas had his own house built (I was one of the workmen), he utilized timbers belonging to the visita for flooring and partitions.

Q. How do you know that said timbers came from the visita?

A. Because I was one of those who transported the timbers.

Q. Do you know the people who pray in the visita?

A. Yes sir.

Q. Did the Chinamen also go to the visita?

A. Yes sir.

Q. How do you know that?

A. Because I have seen them.

Q. If you have seen them, please state the manner in which they worship.

A. Standing up and kneeling down.

Q. Were those Chinamen whom you have seen, baptized or not?

A. Some of them were, others not.

Q. Do you know whether a Roman priest has seen the Chinamen praying there?

A. I do not know.

Q. Since when do they pray and worship in that chapel?

A. It is such an old custom that the Chinamen have even their brotherhood whenever the fiest- is being celebrated.

114 Q. Do you know whether anybody lights candles in the visita?

A. Yes sir, the big candles are placed there by the Chinamen.

Q. Do you remember the color of those candles?
A. Some were white and others red.

Cross-examination by plaintiffs:

Q. At the time that you contributed to the erection of the visita, were you A. R. catholic?
A. No sir.
Q. What religion did you profess?
A. I believed in one only God.
Q. Did the residents of the barrio know that you were not catholic?
A. I do not know.
Q. Can you tell the court who is the founder of that religion which you professed?
A. My fathers taught me to adore only a single God.
Q. Have your fathers not told you who the founder is?
A. No sir.
Q. Were the residents of the barrio catholics?
A. There were catholics and also others.
Q. What religion professed the catholic members?
A. I do not know.

Attorney for defendants:

Q. Do you know what religion the residents of the barrio profess now?
A. The barrio is full of Aglipayans, there are also protestants and romans.
Q. What religion dominates in the barrio?

A. The question is withdrawn.

JUAN SANTIAGO, resident of Concepcion, Malabon:

Q. How old are you?
A. Seventy-six years.
Q. Do you know the visita of Concepcion?
A. Yes sir.
Q. Why do you know it?
A. Because I was born there.
115 Q. Do you know who is the owner of the visita of Concepcion?
A. There is no other owner but the barrio, and the elder brother is in charge.
Q. How do you know that the visita belongs to the barrio?
A. Because it was erected at the expense of the barrio.
Q. Have you ever had any office in the visita?
A. Yes sir.
Q. What was your office?
A. Sometimes agent, and others clerk.
Q. Whose agent or clerk?
A. Of the elder brother.
Q. Do you know, or have you known the priests of Tambobong?
A. I have known some of them, and others not.
Q. Have you known the priest Martin Ruiz?
A. Yes sir.

Q. Do you know whether he ever intervened in the administration of the visita?

A. No sir, once the said priest went with a sister of charity to the convent of the visita in order to leave her there, but the elder brother objected, and the priest withdrew.

Q. Who was the elder brother who objected?

A. Estanislao Jocson.

Q. Have you donated anything to the visita of Concepcion?

A. Yes sir.

Q. What have you donated to said visita?

A. Two flags, one of silk and one of cloth.

Q. What did you say about silver?

A. The handle was made of silver.

Cross-examination by plaintiffs:

Q. Were you A. R. catholic when you made your donation?

A. Yes sir.

Q. Did you make the donation to the catholic church?

A. No sir.

Q. What was your thought when you made that donation?

116 A. I gave those things for their use.

Q. But in your opinion, what religion was that of the chapel?

A. It was a visita where priests read masses.

Q. Were the priests catholics?

A. They now seem to be Aglipayans.

Q. At the time that you made the donation, what were the priests then?

A. They were Aglipayans.

Q. How long ago did you make the donation?

A. A couple of years ago.

ANGEL LUNA, of Concepcion, Malabon:

Q. Do you know the visita of Concepcion?

A. Yes sir.

Q. Do you know what religion is professed there?

A. The religion of the Independent Filipino church.

Q. Since when is said religion being professed there?

A. Since over a year.

Q. What was the religion which was professed there before the Independent Fil. church?

A. No special worship or religion was professed there formerly.

Q. Did the A. R. church not worship there?

A. Yes sir, but long ago.

Q. How is it that the A. R. church ceased worshipping there?

A. I do not know why.

Q. Do you remember the date since when the A. R. church ceased worshipping there?

A. Some seven or eight months before the arrival of the Indep. Fil. church.

Q. Do you know who was the parish priest of Tambobong of the

Roman church,, at the time that the catholic church ceased worshipping in the Concepcion chapel?

A. Father- Changco and Lorenzo Gregorio.

Q. Have these priests never held services of the A. R. church there?

A. No sir.

Q. Why did they not worship there?

117 A. I do not know the reason, but I know that Father Lorenzo Gregorio came to my house a certain day and asked me to assist him and to ask the residents of the barrio to make a written declaration to the effect that the visita of the barrio of Concepcion is the property of the A. R. church, if said church cared to read mass there, but I answered that I could not help him.

Q. Do you know the document which I exhibit to you here?

A. That is a true copy of the document that forms a part of the records of the brotherhood of the barrio of Concepcion of Malabon.

The attorney for defendants offers said document in evidence.

Q. What is said brotherhood to which you refer?

A. It is the meeting of the residents, including the elder brothers, who represent the barrio.

Q. Why do you say that they represent the interests of the barrio?

A. Because they have appointed me elder brother.

Q. Who are those who have appointed you elder brother?

A. Martin Esguerra, Samuel Tuason, Lino Paez, and many residents whom I cannot enumerate in this moment, some fifty residents, all of the barrio of Concepcion, took part in the meeting which elected me, and the- signed an instrument in which they certified that I was elected, which said instrument is at my house in my possession.

Q. And they call that meeting "the brotherhood of the barrio of Concepcion?"

A. Yes sir.

Q. Has any A. R. catholic taken part in your election as elder brother?

A. No sir.

Q. Were you A. R. catholic at the time of your election?

A. Apparently yes, but in my heart not.

Q. When were you elected elder brother?

A. I believe it was 1902, but I took charge in 1903.

Cross-examination by plaintiffs:

Q. What does that brotherhood represent regarding the visita of Concepcion?

A. It represents the preservation of the visita and the 118 defense of its interests.

Q. Which is the true representation of the barrio regarding the visita of Concepcion?

A. The elder brother.

Q. And why?

A. Because he is empowered to defend the interests of the visita.

Q. Has the visita no other representation but only the brotherhood?
A. No other, sir.
Q. How old are you?
A. 36 years.

EXHIBIT "A."

We the undersigned, declare publicly that we are residents of this town of Malabon, province of Rizal, and some of us are contributors to the erection and perfection of the visita of Concepcion, of the jurisdiction of this town, as may be seen in the attached list of the benefactors of said visita. We, therefore, as residents and above all as benefactors of this religious foundation, declare that with our donations we intended to contribute to the foundation and support of a A. R. C. chapel; and with good reason we suppose that the other contributors had the same intention, said other contributors not being alive any more; and we base our reasoning on the fact that at that time there existed no other religion in this locality, with exception of the said A. R. C. religion. And in fact, from the first years of the foundation of the visita, the same was in possession of the A. R. C church, until 1902, and in order that the intentions of the benefactors be not frustrated, we protest against the use of the chapel for any other purposes except those of the A. R. C. church.
Malabon, January 1, 1905.

Signatures.

119 In the town of Tambobong, Province of Rizal, on this 2nd day of October, 1902: The undersigned principal residents of this same town have united in a meeting in this convent of the visita of the Purisima Concepcion, at the invitation of the elder brother of the brotherhood of said visita, Don Martin Ezguerra, taking part in this meeting the elder brother elected for this year, Samuel Tuason, and the former elder brothers Pedro Roque, Isidro Estanislao, Euleuterio Villaruz, and the secretary of the said brotherhood, Juan Santiago, and the ground for the meeting was explained by Martin Ezguerra in the following manner:

1. That according to the report of the secretary Juan Santiago, the books in which are recorded the elections, the taking of possession and the manner in which the convent and visita were built which this barrio possesses and which are administered by the elder brother, *are* all destroyed by fire, including the inventory from which appeared all the ornaments which are being used at the mass-reading and other properties of the said visita, which belongs to the barrio, said destruction having occurred at the time that the American troops occupied the country; and in view of the fact that at the time that he took over the office of elder brother, his predecessor Paulo Rodriguez handed no money over to him, but only the keys, he now wished that his delivery of the office to the elder brother elect, Manuel Tuason, be made under inventory and publicly.

2. He also stated that he had been elder brother and municipal

presidente at the same time and that since the time of American occupation the convent was used as office of the presidente because the military authorities had occupied the real municipal tribunal and he now wished to know the general opinion whether after the delivery of the office to the new elder brother Samuel Tuason, they would consent that the convent be still used for office rooms of the municipal presidente.

120 3. He also stated that in view of the loss by fire of the said books and inventory of the brotherhood it was necessary to establish the truth that this visita and convent of the Purisima Concepcion with the lot pertaining thereto and all its fixtures, do not recognize any other owner except the barrio itself, who founded and erected the visita with the money of contributions, and under the care of the elder brothers who directed the erection from the date of its foundation up to the present time.

And all the persons present, being aware of the object and wishes of the elder brother Martin Ezguerra, after due consideration and debate, resolved unanimously the following:

1. The majority testifies that the loss and destruction by fire of the books and papers of the visita, as stated by the secretary of the brotherhood, Juan Santiago, is true.

2. They all agree that the delivery of the office of elder brother be made under inventory of all the fixtures and ornaments which the visita possesses, and they resolve that the delivery of the office be perfected in the old custom, *i. e.*, that the elder brother who will direct the fiest- of the Purisima Concepcion in 1904, be elected in third place, as the brother who will direct the fiest- of 1903 has already been elected in the person of Rafael Singson.

The election of the third place will be held in the old manner, *i. e.*, that it will be done by chance, extracting from the urn one of the ten papers on which are written the names of the principal residents of the barrio; said residents of importance may be included upon their own petition if their standing is well known by the entire barrio, otherwise they will be designated by the former and the actual elder brothers or by other prominent citizens who partake in each meeting of the delivery of the office of elder brother.

The delivery of office and the election shall be recorded in the presence and under the direction of the municipal president,

121 or any member of the council delegated by the said Presidente. The Secretary may be appointed at the time of the meeting.

3rd. It was resolved to form rules and regulations for the brotherhood, to be approved by the residents of intelligence, and to be submitted to the Municipality.

4th. It was unanimously resolved that the office of the municipal presidente might continue in the convent of the visita of the barrio as long as convenient; but that all necessary repairs should be made by said office, and that the elder brother would be entitled to the use of the convent at the time of the preparations of the fiest- of the Virgin of the barrio.

5th. All of them attest, and above all the oldest residents, that this

visita, the convent, and all the furniture of the same, were erected and purchased by the brotherhood of this visita, and that all the funds invested up to the present time, comes from the contributions donated by the residents of Tambobong, wherefore, since the beginning, *i. e.*, since more than a hundred years, no priest of the Catholic church has intervened in the erection and administration of this visita and convent of Concepcion, but only the elder brothers. That the priests have only intervened in the masses, but that even for that purpose they had to apply for permission, the same as any other devote person who wished to have a mass read, or other things done which are related to the religion in which the assistance of a priest with the permission of the elder brother is necessary.

6th. Although the above mentioned rules and regulations have not yet been formed, all parties present state that from this moment they give full power and authority to the elder brother of the brotherhood of the visita of the Purisima Concepcion, not only to have the administration in the name of the barrio and the residents who founded it, of the said visita and convent, but also to defend its rights before every competent tribunal and authority who might try and decide any litigation involving the ownership of this visita, convent and their furniture.

122 7th. It was also resolved that these resolutions be duly recorded with whatever further resolutions may be voted, and that the record be kept by the elder brother until such time as the rules and regulations are duly prepared.

In witness whereof, and of all the resolutions above written on four pages, including this page, we have hereunto set our hands with the secretary Santiago Quimson, municipal secretary of the municipality, duly appointed as such, the day, month and year first above written.

The 19th day of May, 1905, the Court rendered the following decision:

The object of this case is to determine the ownership, right of possession and use of the convent, chapel and lot on which they are erected in the barrio of Concepcion, of the municipality of Tambobong, province of Rizal, which the A. R. C. church attempts to recover as its own, and in its representation the parish priest of said church in the municipality of Tambobong, D. Lorenzo Gregorio first, and thereafter D. Lino Cahili, the defendants being Leonardo Santos, Matias Adriano, Angel Luna and Teodoro Santos, and it is furthermore prayed in the same complaint that a preliminary injunction be granted, prohibiting the use of the said chapel for objects and purposes contrary to those of the said A. R. C. church.

The order made by the Hon. E. Finley Johnson, Justice of the Supreme Court, denying the preliminary injunction prayed for by the plaintiffs, has relieved and relieves this Court from the necessity to determine the propriety or impropriety of said relief. Justice Johnson thought the injunction not proper, and his decision must be respected since it has not been appealed from.

Plaintiffs allege that the A. R. C. church is a juridic ecclesiastic

entity which exists particularly in the Philippine Islands, where since immemorial time it has had, and has now the right to acquire and possess for its use property of every kind and description,
123 and that in its representation, and by virtue of his character of parish priest of Tambobong, the latter has the right to the ownership, possession, enjoyment and occupation of the chapel pertaining to the A. R. C. church, situated in the barrio of Concepcion of the said town, with its adjoining convent and the lot on which said buildings have been erected, founded more than 40 years ago for the exclusive purpose of the preaching, ceremonies and worship of the A. R. C. church, and that said properties since that time have been devoted to the worshipping of the A. R. C. church, and have been in the adverse, open and uninterrupted possession of the said church until the month of November, 1902, and that the defendants deprive the plaintiffs unlawfully of the possession of the said chapel and devote the same to uses and purposes other than those for which it was erected, preventing the said A. R. C. church to comply with its duty of administering said property against all reason and right and against the will of all the persons who have contributed to the construction of the said chapel, and that the defendants devote the same to the uses of a religious body and doctrine that are contrary to the A. R. C. church.

The defendants interposed a demurrer to the complaint, alleging among other grounds the lis-pendency, and the Court overruled this demurrer, among others for this reason, that the *lis pendens* is not a fact which appears from the complaint, and hence, that by virtue of the provisions of sec. 92 of the Code of Civil procedure it cannot be considered, while according to said sec. objection might be made by answer.

The defendants in their answer allege in substance that the barrio of Concepcion, or the brotherhood of said barrio, represented by the so-called elder brothers, who are elected from year to year, according to immemorial custom, is an association of public interest, actually represented by the elder brother Angel Luna, one of the defendants, and that said barrio is the owner and possessor of said chapel, convent and lot which are sought to be recovered in this action, which were founded more than 60 years ago, and that said brotherhood
124 or association has continued until now without interruption in its representation and rights; that they deny each and every allegation of the complaint; that said buildings were erected with the funds and at the expense of the residents of the barrio, to which the lot belongs on which said buildings were erected; that from the time of their erection, which is more than a century ago, the residents of the barrio of Concepcion, and on their behalf the elder brother, had and disposed of the keys of the visita and convent, who locked and opened at his discretion, delivered and demanded the keys to and from whom he pleased, without being subject to the orders of anybody; that the elder brother also was in charge of the repairs of the chapel and convent, and of the expenses of the fiest-, of the invitation of a priest for the mass and of the arrangements for the temporary lodging of the priest in the con-

vent; that there exists a final sentence, approved by the Court of Bulacan, rendered on September 9, 1903, in a litigation between these same plaintiffs and defendants, regarding the same buildings and lot, having the same causes of action, name and title as the case No. 67 of the Court of Rizal, which says that the right of the A. R. C. church to the ownership of the chapel, convent and land in question has not been proven by any of the means of acquisition, recognized by the Civil Code, and that therefore the A. R. C. church cannot be declared and recognized as owner of the chapel, convent and lot on which they are erected in the barrio of Concepcion, town of Tambobong, province of Rizal; and that the case is dismissed as against the defendants, with the costs against plaintiffs; wherefrom the defendants conclude that the present case has in fact already been decided judicially, and is now *res adjudicata,* and as such constitutes an estoppel as against the plaintiffs.

The defendants then pray that it be definitely declared that the chapel, convent and lot referred to have been, and are the property and possession of the brotherhood of the sanctuary of the barrio of Concepcion.

125 If the institution of the present suit were only a repetition of the other which existed between the plaintiffs and defendants and which ended in a final sentence of the Hon. Judge Roxas, and if it constituted in fact *res adjudicata* between the said parties, as the defendants allege in their answer, then the task before this Court would be simpler, and evidently much easier.

In that case, the task of the Court would consist only in a comparison of both cases, in order to determine whether in the suit decided by the sentence which is said to be final, rendered by the Hon. Judge Roxas, and in the suit which is now pending a decision, there exists the most perfect identity in the things, the causes, the persons of the litigants and their character; and if it be found that such identity exists, to declare that the present matter is *res adjudicata* that the sentence rendered by Judge Roxas is a legal truth, that it is impossible to go back on the same, and that the only remedy of plaintiffs would consist in an action praying for a review of the former case, which might bring forth a contrary decision. Since clearly the former and the actual plaintiffs, as well as the things and causes alleged in both actions are identical it remains only to be decided whether the same identity exists as to the parties defendant, whose names are different in the two actions. And it would only be necessary to determine whether, regardless of the difference of names, there exists the identity of persons mentioned in sec. 1252 of the Civil Code, *i. e.* whether the actual defendants are so closely connected with the former defendants by consolidated interests, that their rights and duties are indivisible. And finding said close connection, there would be no right to make a new and distinct finding from the evidence presented by the plaintiffs which has already been considered and constitutes the basis of the sentence of Judge Roxas, because, whatever may be the intrinsic justice of a sentence, it is certain that its expositions are irrevocable and can not be disturbed, as thereby the strength of a final sentence would be shaken, (Sent. Supr.

126 Court of Spain, Feb. 7, 1881.); and because (as Manresa says in vol. 8 of his comments on the Civil Code) without said

strength, attributed to the courts, the litigations would never take an end, as was already clearly expressed by the laws of Tit. 22, Part. 3, and by the jurisprudence contained in the decisions of the Supreme Court; then, finally, the task of the court would limit itself to determine whether, regardless of the difference of names of the defendants, as a matter of fact the legal effects of the sentence of Judge Roxas would prejudice the present defendants who did not intervene in said case, and whether they for that reason have the right to rely on the estoppel provided by law 20, Tit. 22, Part. 3, and by the sentences of May 26 and Dec. 26, 1879 of the Sup. Ct., as to such cases in which the persons who had not intervened in the former case maintain the same action with the same purpose, rely on the same rights and base their claims on the same titles, so that the legal situation of the parties is identical in both suits.

But can the court take into consideration the allegation of *res adjudicata*, made by the defendants in their answer? In my opinion, not, because this fact, which according to the defendants themselves, is of the highest importance and means a fatal estoppel for the plaintiffs, has remained absolutely unsupported by any proof, and it seems difficult to explain, in view of its frankly admitted importance in the present litigation, why not even an attempt has been made by the defendants to present evidence during the trial of the existence of said fact.

The court cannot simply go by the allegations *by the allegations* of the parties, and the judgment can only be rendered from the alleged and proven facts. Could a copy of the sentence of Judge Roxas exhibited in the injunction proceedings, which was decided by the Honorable Judge, Mr. Johnson, and is attached to the proceedings in the present action, be considered as sufficient to establish the fact that a former, identical, and finally settled law suit existed? Said evidence, although presented in the preliminary injunction proceedings, was clearly not presented by the defendants at the trial of the
127 present action, and the lack of presentation of said evidence has prevented the plaintiffs from contradicting said evidence, or from accepting the same totally or partially, and hence has also prevented the court from admitting or disallowing said evidence.

The important question as to whether or not in the case at bar the estoppel by reason of *res adjudicata* lies, can be considered as legally dismissed. Upon the record before the Court there seems to be no possibility to consider the legal influence which the allegation of *res adjudicata* can have in the present case, wherefore the court can only consider the oral and documentary evidence which is before it.

From said evidence it appears:

First. That the chapel and adjoining convent of the barrio of Concepcion, municipality of Tambobong, province of Rizal, with the lot on which they are erected, have been built by the residents of said barrio and at the expense of their charity money and gifts in funds and material for said buildings.

Second. That the same residents of the barrio of Concepcion paid for the furniture, the ornaments and other things for the use and service in said chapel; that at the beginning the chapel had a nipa roof, thereafter a tile roof, and now has an iron roof; that in the year

1880 the chapel was destroyed by the earthquake of that year and that the visita was rebuilt by the elder brothers who succeeded each other in said office, and the ornaments were donated by the residents of the barrio of Concepcion.

Third. That from immemorial time until 1902 said chapel has been constantly devoted to the ceremonies and worshipping of the A. R. C. church, and that exclusively and without exception A. R. C. priests read the masses, preached, administered the sacraments of baptism and confession in said chapel until December, 1902, when the Aglipayan community worshipped in said visita and took and kept possession of the same up to the present time.

128 Fourth. That the administration and management of the said visita had been continually in the hands of the so-called elder brothers, a sort of trustees, who were appointed yearly by the board of catholic prominent citizens of the barrio of Concepcion, or by vote of the former elder brothers, who also were catholic, and said elder brothers and trustees had charge of the gifts donated by the residents of the barrio, looked after the necessary repairs of the building, prepared the feasts and arranged the reading of masses by a priest by paying, or assignment of charity money. That they used to have control of the keys of the visita, and opened the same when somebody wanted a mass read, although the parish priest of Tambobong had no intervention in the election of these elder brothers.

Fifth. That in 1902, when Samuel Tuason was elder brother of said visita, it happened that the worshipping of the A. R. C. church in said visita ceased, and that they were substituted by the Fil. Independent church, whose representatives had been invited by certain residents of the barrio of Concepcion by reason of the denial of the parish priest of Tambobong, the predecessor of Father Lino Cahili, to read mass there during the fiest of the barrio, which was coming on at the time.

Sixth. That part of the ornaments which were used in said chapel, were kept by the parties, who had acquired them, in their own homes, and that said parties sent them to the chapel for service during the feast days, although all said ornaments are included in the inventory of the visita of Concepcion.

Seventh. That neither the A. R. C. church, nor the parish priests of said church in charge of the church in the municipality of Tambobong, have paid for the primitive erection, nor for the re-erection of the said visita.

Eighth. That nevertheless, it is a clear and a sufficiently proven fact, that the erection of said chapel, and convent, the preservation of said buildings, the repairing of same, the acquisition of all

129 the ornaments, furniture and other things used in the same, was expressly and exclusively intended for the uses of the A. R. C. church, and for the express and exclusive benefit of those who professed the A. R. C. religion.

Ninth. That many of the contributors with funds and material of construction for the erection of said chapel and convent, for the re-election of the same after the earthquake of 1880, and many of

those persons who paid for the ornaments, furniture and other things which were designated for the exclusive service in said chapel, are already dead, and that many of the surviving people have remained, and still remain faithful and devoted to the worship of the A. R. C. church since 1892, which is the year that said visita was occupied by the Aglipayan community. That said many surviving residents of the barrio of Concepcion, who must be considered cofounders and benefactors of said chapel, which since immemorial time was designated for the worshipping of the A. R. C. church, have been deprived of its use, and experience that the religious purposes for which they sacrificed themselves, and liberally contributed gifts in money and material, in order to have in the barrio of Concepcion a public oratory, where all the A. R. catholics might worship, is frustrated.

Now then:—In view of the foregoing facts, which the court believes proven, the first question of law which arises, is whether or not certain residents of said barrio of Concepcion, be they many or a few only, who want, or have wanted to separate themselves from the A. R. C. community, have the right to offer the chapel and convent for the uses of another religion, distinct from and contrary to the worship and uses of the A. R. C. church. Here we must ask: Were these dissidents, many or few, who have separated themselves from the A. R. C. community, the only and absolute owners of these buildings? If they are, it is clear that their very first and inherent right as owners, was, to dispose of said buildings at their own pleasure, without any further limitations than those established by the laws. (Sec. 348 of the Civil Code). But if they are not the only and absolute owners, it is just as evident, that the act by them performed, in assigning the said buildings to the uses and
130 services of another community, means that they dispose of something that does not belong to them, whereby they violate the rights of the others. There is nothing in the record wherefrom it appears that said dissidents, many or few, of the barrio of Conception, are the only and absolute owners of the visita of Concepcion. The mere fact that some of them have contributed gifts of money, and others lime, stones and timber, or certain ornaments and furniture, can at the most constitute a sort of co-ownership of said buildings and of the things which were expressly designated for service within the same, supposing (but not deciding) that the religious purposes which they persecuted and for which the gifts of the contributors were expressly designated, might be considered as out of the question. Under this supposition there exists legally the indivisibility and community of the ownership of said buildings or of the right to designate them for the use and service for which they were originally erected, and under this supposition (sec. 394 of the Civil Code) each person may use the common things as long as he does so in accordance with the purpose and in such manner that he does not prejudice the rights of the community. Hence, making the largest possible concession to those residents of the barrio of Concepcion who have separated themselves from the A. R. C. church, in considering them as co-owners of the buildings in dis-

pute, the fact remains that in accordance with the provisions of the Civil Code and omitting the canonic law altogether, said buildings, or public visita of Concepcion with its adjoining convent, cannot be used for other purposes than for the *the* worship and ceremonies of the A. R. C. church, not only because in this manner the clear will and purpose of those people is being carried out who by contributions, gifts and liberal donations, made in proportion to their devotion and economical means, paid for the erection, re-erection and repairs of the buildings, and acquired all the things necessary for use within the same, but also because, even if said will and purposes lacked all outside appearance, they could not be interpreted in any other manner, in view of the eloquent and very significant

131 fact that the A. R. C. church was the only officially professed religion in the Philippine Islands by the State and by all its organizations dependent upon it, as the provinces, towns, barrios and visitas, and that it was the only religion which the residents of the Philippine Islands were allowed to profess publicly, but on the other hand the fact has been proven that the religion which the residents of the barrio of Concepcion professed at the time of the erection of said buildings and up to the month of November 1902, was publicly the religion of the A. R. C. church. The concordate, executed between the "Santa Sede" and the Spanish Government on March 16, 1851, established the rule that the religion of the State was the religion of the A. R. C. church, and that the State would not allow other ceremonies or public manifestations than only those of the religion of the State, and the Spanish government was so zealous in the maintenance of the exact execution of these provisions, that in the Penal Code for the Philippine Islands, in its sec. 226, it established the punishment of "prision correctional" even for such people who might perform acts of public propaganda, of preaching or other ceremonies, pertaining to a religion other than that of the State, *i. e.*, the religion of the A. R. C. church. Now then, if the chapel and convent of Concepcion with their building lot cannot be considered the exclusive property of certain residents of the barrio of Concepcion, although they may be called benefactors or contributors to the same, and if said buildings could neither be designated to the worship or ceremonies of another religion, excepting the religion of the A. R. C. church, which was the only practically and publicly professed religion of the residents of the Philippine Islands, and determinedly of the residents of the barrio of Concepcion, who, or which entity then has the right to their exclusive use? Legal precedents of former times, and it may be said, coincident with the first times of the possession of the Philippine Islands by the Spaniards, which need not be discussed here, are sufficient to declare that the chapel, convent and lot in litigation must be considered ecclesiastic property, their use and disposal belonging to the A. R. C. church.

132 Laws Nos. 1 and 18, book 5, tit. 1 of the "Fuero Juzgo" provide that all things which were once given to the churches, be it by the principal persons or by other devote people, must be for

ever held and possessed by the church, because a thing once given to God, must not return into the control of men.

Law No. 1, tit. 12, part 1, says: "Houses of religion are the so-called hermitas . . . the churches . . . and all other places where people go clearly to serve God under whatever name it may be . . . and they can not be changed." Also law 3 of the same book and part provides: "The churches or monasteries or other religious places are not for the use of men . . . and must not be used in any other manner." Law 12, tit. 28, part 1, provides more strictly yet that no men can have the ownership of a sacred, religious or saint house which is established to serve God, nor can men count them among their property, and even the clerical officers, who are in their possession, have not the ownership of the same, but hold them as keepers or servants."

Law 1, tit. 8, book 1 of the Novisima Recopilacion, has also ratified said provisions, establishing, that all things once given to the church, from then in the future, by Kings or other people devoted to God, when directly given, shall always be kept in the hands of God. The concordates of March 16, 1851, and April 4, 1860, executed between the Santa Sede and the Spanish government, establish as fundamental basis of their provisions the desire of the Spanish government to insure to the Catholic church the peaceful possession of its property and rights; they establish and recognize the right of the A. R. C. church to acquire and possess property; and the Civil Code in its sec. 38 establishes that juridic persons may acquire and possess all kinds of property, as well as contract obligations and maintain civil and criminal actions, in which regard to church will be governed by the basis of the concordate executed between both powers.

The concordate executed between the Santa Sede and the Spanish government in 1851, in its law of March 14 of the said year
133 declares that all the property which is now in the possession of the church, and which may be acquired in the future, will be solemnly respected. The concordate of April 4, 1860, has ratified the covenants of the concordate of 1851.

The ecclesiastic character of the property in dispute may be considered unquestioned. Devoti, on page 186 of his 'Instituciones de derecho canonico' says that the sacred houses are those which are consecrated to the religion of the divine worship. The principal sacred things are the churches or buildings, consecrated to divine offices and other religious functions.

Chapels, or public oratories are certain churches of small size, situated in the field or in townships, and designated expressly for the divine worship, and which have a door for the public service, where everybody may enter who wishes to. In their erection, the authority of the Bishop must intervene, they must be blessed, and they must have a bell by means of which the people are called to religious acts. Gomez Salazar, in his 'Instituciones de derecho canonico," vol. 3, part 20, classifies principally among the sacred and blessed houses the churches, taking them in their meaning of sacred places or buildings, where the faithful assemble for divine worship and in order to

receive the holy sacraments. And he defines the public oratories, saying that they are churches perpetually designated by competent authority for the worship of God, having free entrance and outlet to the highway, and for the erection of which the license and authority of the Bishop must be obtained. . . . According to Gomez Zamora (regio patronato español é indiano) there are three classes of ecclesiastic property: To the first belong the temples, cemeteries, sacred cups, writings, and other sacred or blessed objects devoted to the divine worship; the second class includes the worldly property of the church and the rents from places of devotion, obtained by contributions of the faithful for the maintenance of the divine worship, of God's ministers, the preservation of temples and other pious purposes.

134 The change in the sovereignty in the Philippine Islands, by virtue of the Treaty of Paris of December 10, 1898, which is in force since the ratification of said treaty by the governments of Spain and the United States on April —, 1899, far from changing, on the contrary, has expressly recognized the preexisting rights within its territory when said change took place. And in my opinion, neither the instructoins given by President McKinley on April 7, 1900, to the Civil Commission, in which he orders to respect all religions, and the separation of church and State, nor the bill de Filipinas of July 1st, 1902, which sanctions said principles, can be relied upon as a valid argument in pro of the free intrusion of the Aglipayan community and its worship and ceremonies, as far as they are contrary to the worship of the A. R. C. church, in the chapel of Concepcion, which is the object of the present litigation. The principle, which has been converted into one of the fundamental laws of the Philippine Islands, of the separation of the church and State, does not mean to say that the churches devoted to the A. R. C. worship would lose their due protection, so that any sect or religious community, contrary to and distinct from the A. R. C. church may be allowed to take over, to take possession of, and to worship in its own fashion in the said churches; The principle of religious liberty must be understood to mean only the liberty of everybody to worship his own God or to adopt the religion which he deems the best, but said liberty can not mean that everybody may invade churches, oratories, mosquees or pagodes which belong to other distinct religious communities. Under religious liberty it must be understood, that everybody may legally and publicly adopt the catholic religion, having been theretofore a protestant, mohammedan or buddhist, or that a catholic may adopt the protestant, Aglipayan or any other religion which he may deem proper; but none of them has the right to deprive the other of the use of his sacred places, or to profane them by introducing in the same rites, ceremonies or other solemnities which are contrary to the religion professed within the same. The religious liberty is a fundamental right, recognized in every resident of the Philippine Islands from the time that the Civil Commission has been in office, by virtue of those notable instructions of President McKinley which were solemnly ratified by the Philippine Bill of July 1st,

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1902, above referred to; and as the freedom of religion carries with it necessarily the freedom of worship, rites, ceremonies and solemnities peculiar and exclusive of each religion, it is clear that the introduction of any worship or ceremonies, based on dogmas or beliefs different from those upon which the worship and ceremonies of the temples, churches, chapels, oratories and any other buildings of another religious community rest, would mean a flagrant violation of the fundamental right, the efficacy of which rests not only, as far as the property in dispute is concerned, upon the traditional canons and practices of the A. R. C. church, but also upon the civil laws here in force, and especially on the Philippine Bill above referred to.

Even recognizing in favor of the defendants and of other residents of the barrio of Concepcion the fact that they have contributed with their money and other gifts to the erection of the buildings in dispute, still, it can not be said that they have thereby acquired the right of ownership or possession of the same, because, if they have had such a right, they clearly and unquestionably waived that right in accordance with the letter and spirit of the laws of the "Fuero Juzgo," the "Partidas" and the "Novisima Recopilacion" above quoted, by making their contributions and gifts in order to be used precisely for the erection of those sacred buildings, which were designated expressly for the worship of the A. R. C. religion, so expressly that the contributions *ipso facto* became irrecoverable, or as law 1, tit. 5, book 1 of the "Novisima Recopilacion" says, they must be kept for ever in the name and possession of the church; or as law 1, tit. 1, book 50 of the Fuero Juzgo states it, they were things already given to God and must not return to men; or as law 3, tit. 12, part 1 states it, they are things of religion, which

> cannot be changed . . . neither to sell, nor to use them
> 136 in any other manner, because all sacred, religious or saint
> things, devoted to the service of God, are not under the control of men, and cannot be considered as their ownership, nor be counted among their property.

Wherefore the visita and church of Concepcion, corresponding to the municipality of Tambobong of the province of Rizal, with its adjoining convent and the lot where they are erected, are declared to belong to the A. R. C. church, and to belong to its exclusive use, and that their lawful possession belongs to the duly appointed A. R. C. priest of the municipality of Tambobong, of the province of Rizal, and by virtue thereof it is ordered that the defendants reinstate the A. R. C. church in their possession, and in its representation D. Lino Cahili, parish priest of the municipality of Tambobong, or his delegate; and finally it is declared that the defendants have no right to devote the said buildings to the uses, practices and solemnities of other religions, distinct from the A. R. C. religion, without prejudice to their right as residents of the barrio of Concepcion, the same as any other resident of the same place, to use said buildings for the purposes and exclusive uses of the A. R. C. religion, for the purposes of which they were erected, without special adjudication of costs. It is so ordered.

On the 12th day of June, 1905, the defendants presented to the Court the following motion, excepting to the judgment, and praying for a reopening of the case and a re-hearing:

Come now the defendants, and represent to the Court:

1. That they enter their exception against the judgment rendered in this cause;

2. They pray that the court reopen the cause and order a new trial of the same, for the following reasons:

A. Because the findings of fact as stated in the judgment, are clearly and manifestly contrary to the weight of evidence presented in this cause.

B. That said judgment is contrary to law.

137 3. In case that the Court overruled this motion, the defendants take exception to such ruling and give notice to the Court of their intention to prosecute a Bill of Exception so that the Supreme Court may revise all the orders, decrees and determinations made in this cause.

On July 7, 1905, the Court made its order, denying the motion for a rehearing and new trial of the cause, solicited by the defendants, against which ruling the latter took exception in due time and form.

This bill of exceptions having been presented, and the parties having been heard after its examination, and the bill having been found correct and certain, it is approved, and the clerk is ordered to forward the same to the Supreme Court of these Islands.

—— ——, 1905, *Judge.*

The hearing of the Bill of Exceptions in cause No. 240 for recovery of property, prosecuted by the Roman Church *vs.* Leonardo Santos *et al.*, is set for the 22nd of July, 1905, at 8:30 a. m., notice whereof is hereby accepted by the representatives of plaintiff's on this 15th day of July, 1905.

Certified by

J. BERNALES.

Accepted,

VICENTE RODRIGUEZ,
Attorney for Plaintiff.

Summons were delivered to the sheriff of this court for the appearance of attorney Mariano Crisostomo for the defendants on the day and at the hour fixed for the hearing of the Bill of Exceptions, on this 17th day of July, 1905.

J. BERNALES, *Clerk.*

138 Received summons for the attorney of the defendants this 17th day of July, 1905.

ANGEL ASUNCION,
Sheriff of Rizal.

Hearing of the Bill of Exceptions.

In the court of first instance of this province of Rizal, Pasig, July 22, 1905: Before the Hon. Judge, in the presence of the Deputy clerk, appears on one side Mr. Marple for the plaintiffs, and on the other side Mr. Crisostomo for the defendants, who moves that the Bill of Exceptions heretofore presented to the court, be approved; Mr. Marple offers no objection, but states that according to sec. 144 of the Code of Civil Procedure the defendants should be required to give a bond for the compliance with the execution of the sentence which might be rendered in favor of his clients in the Supreme Court.

Mr. Crisostomo, answering the motion of Mr. Marple, states that in his opinion the record does not contain the special circumstances enumerated in the said section, and which must exist in order that the court may require the defendants to give a bond, and therefore prays that the motion be overruled.

The Court, having heard both parties, made the following order:

SILVESTRE APACIBLE.
Deputy Clerk.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Province of Rizal.

No. 240.

THE SACRED A. R. C. CHURCH and the Parish Priest, LINO CAHILI, of Tambobong, Rizal, Plaintiff,

vs.

ANGEL LUNA, LEONARDO SANTOS, MATIAS ADRIANO, and TEODORO SANTOS, Defendants.

139 Come now the plaintiffs and propose the following amendment in the Bill of Exceptions submitted by the defendants:

"For the following special reasons it is ordered that the execution of the sentence be not suspended during the appeal of this suit. It is evident and clear that the defendants have no proper right to the Chapel nor to the convent which are the object of this suit. That they have neither any lawful representation of other persons or juridic entities with a right to the said chapel or convent. It further appears that there are in the chapel many fixtures pertaining to the chapel itself which will be in danger, if the execution of the sentence is suspended. Nevertheless, if the defendants furnish a bond in the sum of . . . with two solvent sureties, to respond for any and all damages which the plaintiffs may suffer during the pendency of the appeal and for the reason that they are deprived of their rights to said chapel and convent during that period, then the sentence will be suspended."

Manila, July 15, 1905.
Sec. 144.

HARTIGAN, MARPLE,
ROHDE, GUTIERREZ,
Attorneys for Plaintiffs.

Received copy.
MARIANO CRISOSTOMO.
Pasig, July 22, 1905.

Decision.

The plaintiff does not oppose the approval of the Bill of Exceptions presented by the defendants, but moves that the sentence be executed, unless the defendants furnish a bond in the sum of P10,000 for the reasons which were stated during the hearing.

Hence the decision of the court will be upon the matter of the approval of the bill of exceptions and of the bond of the defendants.

140 As to the first matter, the Court resolves to approve said Bill of Exceptions, with the amendment that the true dates be filled out as far as they have been omitted in said Bill of Exceptions and as far as they are marked only by dots, and it is also resolved that the clerk also certify that the proceedings in the matter of the injunction, which are copied in said Bill of exceptions, and within which there is copied the decision of Judge Roxas and of Justice Johnson, are proceedings which are attached to the pleadings in this case, without having been formally filed during the trial of the case.

Regarding the second matter, the Court believes that there exist no special reasons why the defendants should furnish a bond in order to prosecute their bill of exceptions and as a requisite for the suspension of the execution of the sentence: first, because the defendants were, and are now in the possession of the properties in dispute, and said possession has been respected by the decision of Justice Johnson in the record of the injunction proceedings maintained by the plaintiffs. Secondly, because the suit is brought for the recovery of real estate and certainly, neither in the complaint, nor during the trial the question of the ownership of personal property has been raised which might exist in the visita of Concepcion, or in the convent adjoining the same, by reason whereof the sentence refers only to said real estate which is in dispute and says nothing absolutely of a decisive character regarding the personal property.

Wherefore it is resolved, that the bill of exceptions filed herein, be approved subject to the above mentioned amendment and the motion that the defendants be required to furnish a bond in order to have the execution of the sentence suspended, is overruled.

It is so ordered.

ESTANISLAO YUSAY,
Judge of the Vth District.

The attorney for the plaintiffs took immediately exception against the foregoing decision.

SILVESTRE APACIBLE.
Deputy Clerk.

141 Filed in the Clerk's office of the Supreme Court of the Philippine Islands, this 17th day of August, 1905.

J. E. BLANCO, *Clerk*,
By H. D. McGEORGE, *Deputy*.

10-40 A. M.

On this 9th day of September, 1905, 3 copies of this bill of exceptions were sent to each of the parties, *i. e.*, to M. Crisostomo and to Hartigan, Marple, etc.

Thereafter this cause was heard in this court upon the oral argument of counsels and upon written briefs, and on the 24th day of November, 1906, the court rendered the following decision:

THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 2842.

LA SANTA I. C. A. R. Y LORENZO GREGORIO, Cure de Dicha Iglesia en el Municipio de Tambobong, Provincia de Rizal, Plaintiffs and Appellees,

vs.

LEONARDO SANTOS, MATIAS ADRIANO, ANGEL LUNA Y TEODORO SANTOS, Defendants and Appellants.

WILLARD, *J.*:

The plaintiffs brought this action to recover the possession of a chapel and the convent annexed thereto situated in the barrio of Concepcion, in the pueblo of Tambobong, in the Province of Rizal. It is stated in a document presented by the defendants that a chapel had existed on this site for more than 100 years. The court below made the following finding of fact:

"Third: That from time immemorial until the year 1902 said chapel has been devoted constantly to the ceremonies of the worship of the C. A. R. religion, the Apo-tolic Roman Catholic priests having invariably been the only ones who read mass therein, and who performed therein the offices of preaching and administering the sacraments of baptism and confession, up to the month of December, 1902, in which the Aglipayan communion held worship in said Chapel and entered into possession of the same up to date.

The evidence, as well of the plaintiffs as of the defendants, supports this finding and there is no evidence whatever to the
142 contrary.

The buildings standing upon the site in question were destroyed in 1880 by an earthquake and their reconstruction was at once commenced and was finished within a few years. The work of reconstruction was performed, and the materials therefor furnished by the inhabitants of the barrio. One witness for the plaintiffs, Blas Marcelo, describes in detail the manner of construction, specifying the names of the persons who contributed to the erection of particular parts of the buildings and of persons who donated ornaments and other articles for the use of the church therein. The witnesses for the defendants, with one exception, all stated when asked who the owner of the chapel was, that it was owned by the people of the barrio. After its construction it was maintained and repairs

were made thereon by the contributions of the Roman Catholics living in the barrio and pueblo. On the 26th of November, 1902, forcible possession of the chapel was taken by representatives of the Independent Filipino church and since that time the worship therein has been in accordance with the rites of that church. What proportion of the people of the barrio belong to the Independent church and what proportion belong to the Roman Catholic Church does not appear. There was, however, presented in evidence by the plaintiffs a document signed by 134 persons in which they stated that their desire was that the chapel should be used for the purposes of the religion professed by the Roman Catholic Church.

That this building is a church, is consecrated as such, and was used, occupied and possessed by the Roman Catholic Church, as a corporation, from the earliest times down to November 1902, is clearly established by the evidence. This case is therefore ruled by what has been decided in the case of Barlin *vs.* Ramirez, No. 2832 decided . . . To the authorities mentioned in that case may be added the following statement by the Supreme Court of the United States in the case of the Mormon Church *vs.* the United States, 136 U. S. 1, 53:

143 "By the Spanish Law, whatever was given to the service of God, became incapable of private ownership, being held by the Clergy as guardians and trustees, and any part not required for their own support, and the repairs, books and furniture of the church, was devoted to works of piety, such as feeding and clothing the poor, supporting orphans, marrying poor virgins, redeeming captives and the like. Partida III, tit. 28, 11, 12-15. When property was given for a particular object, as a church, a hospital, a convent or a community, etc., and the object failed, the property did not revert to the donor, or his heirs, but devolved to the crown, the church, or other convent or community, unless the donation contained an express condition in writing to the contrary. Tapia Febrero Novisimo, Lib. 2, tit. 4, Cap. 24-26."

It follows that the Roman Catholic Church is entitled to the exclusive possession and occupation of the Property mentioned in the complaint.

The principal claim set up by the defense in his brief, is that there existed, and still exists, in the barrio of Concepcion a cofradia; that this cofradia was, and is a judicial entity, that it constructed the church building and convent, has always had possession thereof, and has always been and now is the owner thereof, and that among the defendants in this action is the *hermano mayor*, an officer of the cofradia who is charged with the administration of its affairs.

The proof does not maintain this claim. No evidence of any kind was presented to show the formation of this alleged cofradia in the manner pointed out by the laws existing prior to the Treaty of Paris. No document setting forth the organization of the cofradia or its purposes or objects was introduced, and besides all this the parol evidence presented at the trial shows none of these things. A great many witnesses were examined both for the plaintiffs and for the defendants. With the exception of Angel Luna, the last witness for

the defense, no one of them mentions the existence of this cofradia. Several of them were asked if there existed a cofradia or hemandad (brotherhood) among the unbaptized Chinese in the town, but no one of the witnesses, even of the defendants, testified to the existence of a cofradia such as is referred to in the brief of the appellants. The last witness presented by the defendants, Angel Luna, made use of the word 'cofradia.' The following questions were asked him
144 and the following answers were given by him in reference thereto:

J—Que es lo que constituye esa cofradia que Vd. dice?

T—Creo que es la reunion de los vecinos entre ellos los hermanos mayores que son los que tienen la representacion de los del barrio.

A—Que fundamento tienenVd. para creer que esos representanlos intereses del barrio de la Concepcion?

T—Porque son los que me han nombrado hermano mayor.

A—Quienes eran los que le han nombrado á V. hermano mayor?

T—Don Martin Esquerra, Samuel Tuason, Lino Paez, y varios vecinos que no puedo mencionarlos en este momento, mas ó menos de cincuenta vecinos, todos del barrio de la Concepcion tomaron parte en la junta que me alijen, los cuales firmaron en el acta de mi nombramiento que no lo he traindo aqui pero lo tengo en mi casa.

A—Y á esta junta llama V. la cofradia del barrio de la Concepcion?

T—Si señor.

The memorandum to which he refers is dated the second day of October, 1902. It recites, among other things, that the church and convent were erected by the *harmanos mayores or cofradia*, but it will be noticed that document was drawn up in October, 1902, after difficulties had arisen between the Roman Catholic Church and the Independent Filipino Church, and its recitals are, therefore, entitled to no weight. The evidence therefore showed that there existed in the barrio no such organization as a confradia.

All of the witnesses, however, both of the plaintiffs and of the defendants, testified that there was a person called the hermano mayor (eldest brother) and that he was charged with the supervision of the buildings, the making of repairs, and the arrangements of the celebration of the fiesta of the barrio. As to the method of his election the witnesses differ. Some of the witnesses for the defendants
145 say he was elected by the people of the barrio; others that he was elected by the ex-hermanos mayores; others that he was elected by the principal contributors to the maintenance of the church, but however he was elected, it is very apparent from the evidence that the existence of such a functionary in no way proves the existence of a juridical entity such as a cofradia in which was based the legal title to this property. He was rather the representative of the barrio than the representative of a cofradia, in fact, many of the witnesses for the defendants testified that the church was owned by the barrio, represented by the hermano mayor. The necessity for some such person is apparent when it is considered that these buildings constituted a visita or hermita which had no resident priest. From time immemorial the visita or chapel had been administered by the

parish priets of Tambobong who did not reside, of course, in the barrio. There being no resident priest, it was necessary that some person, resident in the barrio, should be charged with the care of the buildings, and in this case that person was called the hermano mayor.

The defendants in their answer set up the defense of *res adjudicata*, and alleged that in a former suit between the same parties concerning the possession of these buildings, a final judgment had been rendered in favor of the defendants which still remained in force. At the trial, however, they offered no evidence in support of these allegations of their answer.

The judgment of the court below is affirmed, with the costs of this instance against the defendants.

To this decision the defendants and appellants duly presented their exception, and on December 3rd, 1906, presented the following motion for a re-hearing:

(Omitting Court, Title, and Cause.)

Motion for Rehearing.

The defendants and appellants, by their Attorneys, move for a new trial of the above entitled cause, and submit to the court
146 the following grounds therefor:

1 That the decision is not based on proper principles of law, in other words, that it is contrary to the provisions of the law, applicable to this cause.

(*a*) The Supreme Court erred in denying to the confradia of the barrio of Concepcion (Tambobong) the juridical capacity to acquire property, the existence of the same being proven in the record, the existence of said confradia being sufficient to show that it can be and is the owner of the buildings which it erected upon its own ground, according to sec. 350 of the Civil Code in force in the Philippine Islands.

There can be no doubt that said confradia existed.

The plaintiffs by their acts have admitted the existence of the confradia of the barrio of Concepcion.

See the testimony of Angel Luna, p. 113 of the evidence:

Q. Why did they not worship there? (Referring to the R. C. priests.)

A. I do not know why, what I know is, that father Gregorio Lorenzo came to my house a certain day, and asked me to accompany him in order to ask the residents of the barrio to declare in writing that the vista and convent of Concepcion is property of the A. R. C. church, if they wish masses read there, but I answered him that I could not do it.

Q. Do you know the document which I show you here?

A. It is a litteral copy of the document which is contained in the records of the cofradia of Concepcion, of Malabon.

Q. What does the cofradia consist of?

A. I believe it is the reunion of the residents, among them of the eldest brothers, who are the representatives of the barrio.

Q. What reason do you have to believe that they represent the interests of the barrio?

A. Because they have appointed me eldest brother. (p. 114.)

The record contains no proof to the contrary, and the cofradia forcibly must exist. See "Recopilacion de Leyes de los Reynos de las Indias" book 1, tit. 1, law 1, where among other things it
147 is stated: and in order that everybody, universally, enjoys the admirable benefit of the redemption by the blood of our Lord Jesus Christ, we beg and recommend to the natives of our Indies, who have not yet adopted our holy religion, for our object in sending teachers and priests to them, is the advantage of their conversion and salvation, whom they should receive and hear benignantly, and whose doctrines they should believe. And we order that the natives and Spaniards, and any other Christians of different provinces and nations living in our said dependencies, islands, and continent, who regenerated by the holy sacrament of the baptism have received the holy faith, they shall firmly believe and simply confess the mistery of the Holy Trinity, Father, Son and Holy Spirit, three distinct persons and only one true God, the commandments of the holy faith, and whatever the holy mother church teaches and preaches; and should they err with obstinate mind, and should they not profess and believe what the holy mother church teaches and preaches, they shall be punished with the penalties prescribed by law according to circumstances."

The same book 1, tit. IV, Law XXV, prescribes the following: "We ordain and command that in all our Indian countries and the continent of the Ocean, for the purpose of founding cofradias, boards, colleges or cabildos of Spaniards, Indians, negros, half-breeds and others, even if it be for pious and spiritual purposes, our license and the permission of the ecclesiastic prelate be first obtained, and that their by-laws be presented to our royal board for the Indies, and that they be examined and modified as may be deemed proper, and in the meantime they cannot be used; and once being confirmed and approved, the said persons are not allowed to meet, or to form a cabildo or ayuntamiento, without the presence of one of our royal ministers, appointed by the viceroy, president or governor, and of the prelate of the house where they meet (10 and 11).

(10) In cedula of February 8, 1758, the observation of this law was ordered, and such meetings as had been founded without
148 royal license were ordered discontinued.

(11) By royal cedula of S. Lorenzo of November 9, 1773, His Majesty expressed his surprise that 19 cofradias of Lima had failed to observe this law; and although he approved them, the viceroy and archbishop stated expressly that in the future it would not be allowed. (See also the jurisprudence regarding "Religious societies" in the A. & E. Ency. of Law, 1st Ed. p. 778,) "A religious corporation *de facto* may be established either by charter or by user of corporate powers."

"The trustees and not the members of the Church or congregation have control of the Church edifice . . . p. 791.

And it appears from the evidence that Nicolas Avendaño witness

for the plaintiffs, testified (p. 56) by answering to the question: "Can you state whether this chapel belongs to Malabon or to the Parish of Malabon?" A. "The visita has been erected by the donations of the Catholics in order that the A. R. C. priests might read mass there", and on page 57 he declares that this chapel has been erected by the funds contributed by the Catholics for the objects of the A. R. C. church, not only contributed by the residents of the barrio of Concepcion, but also those of other towns and even those of Navotas.

It must not be forgotten that the acts of the A. R. C. religion, executed by the faithful residents of the barrio of Concepcion during the Spanish Government, regarding and in the buildings in question, were obligatory and prescribed by the law of the Spanish Government, which framed in accordance with the concordate executed between the Catholic kings and Pope Alexander VI, infringes sections 618, 624, 1267, and 1268 of the Civil Code, according to which the donation, to be valid, must be spontaneous and voluntary.

Act 190, *i. e.*, the Code of Civil Procedure, in its sec. 275 provides which facts and matters must be admitted in the courts without proof."

Matters judicially recognized: The existence and territorial extent of states, and of the several islands forming the Philip-
149 pine Archipelago, their forms of government and symbols of nationality, the laws of nations, the admiralty and maritime Courts of the world and their seals, the political constitution and history of the U. S. and of the Phil. Islands, the seals of the several departments of the government of the U. S., and the States of the Union, and of the Philippine Islands, public and private, and official acts of the legislative, executive and judicial departments of the U. S. and of the Philippine Islands, the laws of nature, and the measure of time, the geographical divisions and political history of the world, and all similar matters of public knowledge shall be judicially recognized by the Court without the introduction of proof; but the court may receive evidence upon any of the subjects in this section stated, when it shall find it necessary for its own information, and may resort for its aid to appropriate books, documents or evidence."

It appears from the testimony of Nicolas Avendaño, witness for the plaintiffs, and on page 60, that the ornaments which the church possesses, were contributed by the catholics, and the witness Martin Esguerra (p. 102) testifies that this chapel is the property of the barrio, because the barrio has paid for the construction and the repairs of the furniture . . . that the residents of the barrio erected this visita in order to have a building where they might adore God . . ." "Has the priest of Tambobong any intervention in the administration of this visita?" "No sir" (p. 103). The eldest brother has always had control of and in his possession the key of this chapel, the residents of the barrio and they themselves were the persons who paid the salary of the chaplain . . . the masses which were read in this hermita were always paid for, and never has a priest or coadjutor read mass there without pay or

charity money." Who presides the election of the eldest brothers?" "The gobernadorcillo or his delegate." "Do the furniture and ornaments of this chapel appear in the inventory of the parish of Tambobong?" "No sir." "Where do they appear?" "In the inventory of the chapel . . . these objects of the chapel are in charge of the eldest brother . . . there exists a brotherhood of Chinamen, baptized and not baptized (p. 104). The Aglipayans read mass there on the day of the Purisima Concepcion because no other priest wanted to."

From all these facts which appear from the record, there is no doubt that the eldest brothers, as trustees of said barrio, are the only persons who had since the foundation, and have now the right to admit or deny to admit persons to worship in this chapel, which is the property of the barrio, devoted to the true God and to no other God; in other words, it is a building where the true God is adored in such manner only as the residents of the barrio with to worship, and it does not matter whether said God be called the God of the Catholics or of the Protestants or of any other sect, as long as he is the true God.

This building belongs to no sect, or church, but is the property of the residents of the barrio, represented by their trustees, the eldest brothers.

The Supreme Court erred in establishing as a conclusion, from the record, that there existed a donation of the real property in question in favor of the A. R. C. Church, infringing by such conclusion the clear and strict provisions of sec. 633 of the Civil Code, according to which any donation, not executed by a public instrument is null, and it must be noted that regarding donations the former laws were the same.

The Supreme Court lacks jurisdiction to destroy and revoke an execution as the one issued by the Hon. Judge Felix Roxas of the same court of first instance of the province of Rizal, and to declare that the A. R. C. Church is entitled as owner to recover the same property in this cause, and it does not matter that said allegation has not been supported by a competent document in the principal trial, as it is sufficient that it has been alleged and that said document forms part of the bill of exceptions; and it should have been respected in order to avoid the rendering of two contradictory sentences regarding the same property and between the same parties, which is inadmissible within the principles of the procedure of any jurisprudence, because it is contrary to the justice which can only be one and indivisible.

2. That the judgment is against the weight of the evidence admitted in this cause.

(*b*) This is clear from the testimony cited under letter *a*, and from other parts of the record, especially from the evidence that the faithful as well as the non-christians contributed money ma-
151 terial and ornaments for said visita; this could in former times not have been allowed because there was no freedom of worship, and everybody was compelled to belong to the A. R. C. religion. This propositon needs no discussion, because it is one of

154 (Omitting Court, Title, and Cause.)

And now come Leonardo Santos, Matias Adriano, Angel Luna and Teodoro Santos, defendants herein, and say:

That on or about the 14th day of December, 1906, the Supreme Court of the Philippine Islands entered a judgment herein in favor of the plaintiffs and against the defendants, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of these defendants, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore these defendants pray that a writ of error now issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, *only* authenticated, may be sent to the Supreme Court of the United States.

(Sgd.) COUDERT BROTHERS,
JOHN HAUSSERMANN,
CHARLES C. COHN,
D. WILLIAMS,
H. W. VAN DYKE,
Attorneys for Defendants.

Service of copy of the foregoing petition acknowledged this 21st day of December, 1906.

(Sgd.) HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for Plaintiffs.

(Same Court, Title, and Cause.)

Assignment of Errors.

The defendants in this action, in connection with their petition for a writ of error, make the following assignment of errors, upon which they will rely for the prosecution of the writ of error in the above entitled cause.

I.

The Court erred in denying the existence of the confradia set up in the answer of defendants and in holding that said confradia was not and is not a judicial entity.

155 II.

The Court erred in holding that said confradia is not entitled to exclusive possession and administration of the property here in dispute.

III.

The Court erred in holding that the Roman Catholic Church is entitled to the exclusive possession and occupancy of the property here in dispute.

IV.

The Court erred in denying defendants' motion for new trial.

V.

The Court erred in affirming the decision of the trial court ordering the defendants to deliver possession of the property to the plaintiffs.

COUDERT BROTHERS,
JOHN HAUSSERMANN,
CHARLES C. COHN,
D. R. WILLIAMS,
H. W. VAN DYKE,
Attorneys for Defendants.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment in a cause which is in the said court before —, or some of you, wherein the Holy Roman Catholic and Apostolic Church and Lorenzo Gregorio, Parish Priest of said Church in the Municipality of Tambobong, Province of Rizal, appear as plaintiffs and Leonardo Santos, Matias Adriano, Angel Luna and Teodoro Santos appear as defendants, a manifest error hath happened to the great damage of the said Leonardo Santos, Matias Adriano, Angel Luna, and Teodoro Santos as by their complaint appears:

We, being willing, that error if any hath been, should be duly corrected, and full and speedy justice done to the parties
156 aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you may have the same at Washington on the 24th day of April, next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 28th day of December, in the year of our Lord one thousand nine hundred and six.

(Sgd.) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

The foregoing writ of error is allowed.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

THE UNITED STATES OF AMERICA, *ss:*

To the Holy Roman Catholic and Apostolic Church and Lorenzo Gregorio, Parish Priest of said Church in the Municipality of Tambobong, Province of Rizal, Greeting:

You and each of you are hereby cited and admonished to appear at the Supreme Court of the United States, to be holden at the City of Washington on the 24th day of April, next, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the Philippine Islands, wherein the Holy Roman Catholic and Apostolic Church and Lorenzo Gregorio, Parish Priest of said church
157 in the Municipality of Tambobong, Province of Rizal, are plaintiffs, and Leonardo Santos, Matias Adriano, Angel Luna and Teodoro Santos are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 28th day of December, in the year of our Lord nineteen hundred and six.

(Sgd.) CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

Receipt of the above citation is hereby admitted and service thereof accepted this 28th day of December, 1906.

(Sgd.) HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for Plantiffs.

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the above entitled Court, do hereby certify that I have examined the attached document, to wit, copies of the decision and sentence rendered in cause No. 2842 of this R. G. prosecuted in the Court of First Instance of Rizal by the Holy Roman Apostolic Church *vs.* Leonardo Santos *et al.*, for recovery of property, and that I have compared the same with the original on file in my office, and that the same is a true and correct copy thereof.

In witness whereof I have hereunto signed my name and affixed the seal of this Court this 3rd day of January, 1907.

(Sgd.) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands,
By R. HERAS, *Deputy.*

(Omitting Court, Title, and Cause.)

Angel Luna, being first duly sworn upon oath, says:
158 That he is one of the defendants and appellants in the above entitled action; that he is well acquainted with the real

property described in the pleadings in the above entitled action and the title and possession of which are in controversy in said above entitled action, and that the said real property exceeds in value the sum of $25,000 *Dollars*, United States Currency.

(Sgd.) ANGEL LUNA.

Subscribed and sworn to before me this 28th day of January, 1907, by Angel Luna, who exhibited to me his personal cedula No. A1423766, issued at Malabon, Rizal, on the 5th day of January 1907.

(Sgd.) FRANK B. INGERSOLL,
Notary Public.

Commission expires Dec. 31, 1908.

Receipt of a copy of the foregoing affidavit is hereby admitted and service thereof accepted this 28th day of January, 1907.

(Sgd.) HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for Plaintiffs and Appellees.

(Omitting Court, Title, and Cause.)

Know all men by these presents, that we, Angel Luna and Teodoro Santos, as principals on behalf of all of the above named defendants and José L. Luna and David Luna, sureties, are held and firmly bound unto the Sacred Apostolic Roman Catholic Church and Lorenzo Gregorio, Curé of said Church in the Municipality of Tambobong, Province of Rizal, Philippine Islands, Plaintiffs and Appellees in the above entitled action, in the sum of $500 lawful money of the United States of America, to be paid unto the said, the Sacred Apostolic Roman Catholic Church and Lorenzo Gregorio, curé of said Church, and their successors, executors, administrators and assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

The condition of this obligation is such that whereas the said Lorenzo Santos, Matias Adriano, Angel Luna and Teodoro
159 Santos have sued out a writ of error to the Supreme Court of the United States to correct a judgment of the Supreme Court of the Philippine Islands rendered in the above entitled action then pending in said last mentioned court on the 18th day of December, 1906, which judgment affirmed the judgment of the Court of First Instance of the Provin-e of Rizal, Philippine Islands, that Plaintiffs and Appellees recover possession of the property described in Plaintiffs' complaint herein;

Now therefore, if the said Leonardo Santos, Matias Adriano, Angel Luna and Teodoro Santos shall prosecute their said writ of error to effect and in case of failing to make good their plea, shall pay to the said Sacred Apostolic Roman Catholic Church and Lorenzo Gregorio, curé of said Church, all costs which may accrue by

reason of the prosecution of said writ, then this obligation shall be void, otherwise to remain in full force and effect.

Witness our hands this 28th day of January, 1907.

(Sgd.) ANGEL LUNA, *Principal.*
TEODORO SANTOS, *Principal.*
JOSÉ L. LUNA, *Surety.*
DAVID LUNA, *Surety.*

CITY OF MANILA,
Philippine Islands, ss:

José L. Luna and David Luna, the sureties named in the foregoing obligation, being first duly sworn upon oath, says — for himself that he is a resident of the Philippine Islands and that he is worth the sum of Five Hundred ($500.00) Dollars, over and above all his just debts and obligations and exclusive of all property exempt from execution.

(Sgd.) JOSÉ L. LUNA.
DAVID LUNA.

Subscribed and sworn to before me this 28th day of January, 1907, by José L. Luna who exhibited personal cedula No. A0716 issued at Manila on the 2nd day of January, 1907, and by
160 David Luna, who exhibited personal cedula No. A1423724 issued at Malabon, Rizal, on the 3rd day of January, 1907.

(Sgd.) FRANK B. INGERSOLL,
Notary Public.

Commission expires December 31, 1908.

The foregoing bond approved by me this 29th day of January, 1907.

(Sgd.) CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

Receipt of a copy of the foregoing bond is hereby admitted and service thereof accepted this 28th day of January, 1907.

(Sgd.) HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for Plaintiffs and Appellees.

161 CITY OF MANILA,
Philippine Islands, ss:

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing one hundred and fifty-nine (159) typewritten pages contain a true, complete and correct translation of the record and proceedings in the Supreme Court of the Philippine Islands in the case of Leonardo Santos, Matias Adriano, Angel Luna and Teodoro Santos, plaintiffs in error, *vs.* The Sacred Apostolic Roman Catholic Church and Lorenzo Gregorio, Curé of said Church in the Municipality of Tambobong, Province of Rizal, defendants in error.

In witness whereof I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this 16th day of March, One Thousand Nine Hundred and Seven.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

162 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment in a cause which is in the said Court before —, or some of you, wherein The Holy Roman Catholic and Apostolic Church and Lorenzo Gregorio, Parish Priest of said church in the Municipality of Tambobong, Province of Rizal appear as plaintiffs and Leonardo Santos, Matias Adriano, Angel Luna and Teodoro Santos appear as defendants, a manifest error hath happened to the great damage of the said Leonardo Santos, Matias Adriano, Angel Luna and Teodoro Santos as by their complaint appears;

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you may have the same at Washington on the 24th day of April, next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

163 Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 28th day of December, in the year of our Lord one thousand nine hundred and six.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

The foregoing writ of error is allowed.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

164 THE UNITED STATES OF AMERICA, *ss:*

To The Holy Roman Catholic and Apostolic Church and Lorenzo Gregorio, Parish Priest of said church in the Municipality of Tambobong, Province of Rizal, Greeting:

You and each of you are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at the City of Washington on the 24th day of April, next, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the Philippine Islands, wherein The Holy Roman Catholic and Apostolic Church and Lorenzo Gregorio, Parish Priest of said church in the Municipality of Tambobong, Province of Rizal are plaintiffs and Leonardo Santos, Matias Adriano, Angel Luna and Teodoro Santos are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 28th day of December, in the year of our Lord nineteen hundred and six.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

Receipt of above citation is hereby admitted and service thereof accepted this 28th day of December, 1906.

HARTIGAN, ROHDE & GUTIERREZ,
Attorneys for Plaintiffs.

Endorsed on cover: File No. 20,691. Philippine Islands supreme court. Term No. 73. Leonardo Santos, Matias Adriano, Angel Luna, and Teodoro Santos, plaintiffs in error, *vs.* The Holy Roman Catholic and Apostolic Church and Lorenzo Gregorio, parish priest of said church in the municipality of Tambobong, province of Rizal. Filed May 2d, 1907. File No. 20,691.

JAN 5 1909
JAMES H. MCKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1908.

No. 73.

LEONARDO SANTOS, MATIAS ADRIANO, ANGEL LUNA, AND TEODORO SANTOS,

Plaintiffs in Error,

vs.

THE HOLY ROMAN CATHOLIC AND APOSTOLIC CHURCH AND LORENZO GREGORIO, PARISH PRIEST OF SAID CHURCH, IN THE MUNICIPALITY OF TAMBOBONG, PROVINCE OF RIZAL,

Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF OF PLAINTIFFS IN ERROR.

CHARLES F. CONSAUL
and
GEORGE F. POLLOCK,
Attorneys for Plaintiffs in Error.

FRANK B. INGERSOLL,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1908.

No. 73.

LEONARDO SANTOS, MATIAS ADRIANO, ANGEL LUNA, AND TEODORO SANTOS,
Plaintiffs in Error,

vs.

THE HOLY ROMAN CATHOLIC AND APOSTOLIC CHURCH AND LORENZO GREGORIO, CURÉ OF SAID CHURCH, IN THE MUNICIPALITY OF TAMBOBONG, PROVINCE OF RIZAL,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF OF PLAINTIFFS IN ERROR.

Statement.

This action was brought by the present defendants in error in the Court of First Instance of the Province of Rizal, Philippine Islands, to recover title to real property in actual possession of the present plaintiffs in error.

An answer was filed by the then defendants in the Court of First

Instance making general denial of the allegations of the complaint and alleging further that a certain association of persons known as a *cofradia*, existing in the barrio of Concepcion where the property is situated, had for more than sixty years been the owner and entitled to the possession of the property in dispute.

The Court of First Instance rendered judgment declaring the properties in dispute to belong to the Apostolic Roman Catholic Church and "to belong to its exclusive use and that their lawful possession belongs to the duly appointed A. R. C. priest of the Municipality of Tambobong" (p. 93 of Record).

Upon the prosecution of a bill of exceptions to the Supreme Court of the Philippine Islands the judgment of the trial Court was affirmed.

Counsel for Plaintiffs in Error respectfully submit the following:

Assignments of Error.

1. The Court erred in denying the existence of the *cofradia* set up in the answer of defendants and in holding that said *cofradia* was not and is not a juridical entity.

2. The Court erred in holding that said *cofradia* is not entitled to the exclusive possession and administration of the property here in dispute.

3. The Court erred in holding that the Roman Catholic Church is entitled to the exclusive possession and occupancy of the property here in dispute.

4. The Court erred in denying the defendants' motion for a new trial.

5. The Court erred in affirming the decision of the trial court, ordering the defendants to deliver possession of the property to plaintiffs.

Brief.

1. ***The Court erred in denying the existence of the cofradia set up in the answer of the defendants and in holding that said cofradia was not and is not a juridical entity.***

Among others the trial Court (pages 87 and 88 of Record) made the following findings:

"First:—That the chapel and adjoining convent of the barrio of Concepcion, municipality of Tambobong, Province of Rizal, with the lot on which they are erected, have been built by the residents of said barrio and at the expense of their charity money and gifts in funds and material for said buildings.

"Second:—That the same residents of the barrio of Concepcion paid for the furniture, the ornaments and other things for the use and service in said chapel; that at the beginning the chapel had a nipa roof, thereafter a zinc roof, and now has an iron roof; that in the year 1880 the chapel was destroyed by the earthquake of the said year and that the *visita* was rebuilt by the elder brothers who succeeded each other in said office, and the ornaments were donated by the residents of the barrio of Concepcion.

"Fourth:—That the administration and management of the said *visita* had been continually in the hands of the so-called elder brothers, a sort of trustees, who were appointed yearly by the board of catholic prominent citizens of the barrio of Concepcion, or by vote of the former elder brothers, who also were catholic, and said elder brothers and trustees had charge of the gifts donated by the residents of the barrio, looked after the necessary repairs of the building, prepared the feasts and arranged the reading of masses by a priest by paying or assignment of charity money. That they used to have control of the keys of the *visita*, and opened the same when somebody wanted a mass read, although the parish priest of Tambobong had no intervention in the election of these elder brothers."

The dictionary of the Spanish Academy defines a *cofradia* to be "A congregation or brotherhood which certain devotees form with competent authority to carry on acts of piety" (*Congregacion ó hermandad que forman algunos devotos con autoridad competente para ejercitarse en obras de piedad*).

Clearly the association referred to in the findings of the trial court falls within this definition of a *cofradia*.

The Supreme Court of the Philippine Islands in its opinion in

this case says: "No evidence of any kind was presented to show the formation of this alleged *cofradia* in the manner pointed out by the laws existing prior to the treaty of Paris. No document setting forth the organization of the *cofradia* or its purposes or objects was introduced, nor does the parol evidence presented at the trial show any of these things."

This seems a mistaken view of the law and the facts. Undoubtedly the trial Court was correct in its first, second and fourth findings of fact. There was abundant evidence to support the existence of a *de facto* association for religious purposes which has in some parts of the record of this case been styled a *cofradia*. By whatever name designated its existence is well established.

In the absence of proof to the contrary the regularity of its organization and operation must be presumed.

Second and Third Assignments of Error.

2. *The Court erred in holding that said cofradia is not entitled to the exclusive possession and administration of the property here in dispute.*

3. *The Court erred in holding that the Roman Catholic Church is entitled to the exclusive possession and occupancy of the property here in dispute.*

This is an action in ejectment. The present plaintiffs in error were in possession, which both under the common and the civil law, is presumed to carry title with it in the absence of proof to the contrary. The Code of Civil Procedure in force in the Philippine Islands, under Section 334, Paragraph 10, declares it to be a legal presumption "That things which a person possesses are owned by him."

"In an action of ejectment the plaintiff seeking to recover possession of land occupied by another must recover upon the strength of his own title rather than upon the weakness of the title of his adversary and the burden rests upon the plaintiff to prove the title he asserts. According to the general rule, this proposition means that he can recover only upon the strength of his own title as being good against the whole world, or as being good against the defend-

ant by estoppel, for the possession of the defendant gives him a right against every man who cannot establish a good title in himself against all comers. The defendant, therefore, is generally permitted to show a better title than the plaintiff in a third person, although the defendant himself has no paper title and does not connect himself in any way with the superior outstanding title."

(Am. & Eng. Ency. of Law, Vol. 10, p. 481.)

"To authorize a recovery in ejectment where the defendant is in possession the plaintiff must show a valid legal title."

(Morehouse v. Phelps, 62 U. S., 21, How., 294.)

"The same rule prevails in a petitory action which is in Louisiana an action in the nature of ejectment."

(Gilmer v. Poindexter, 51 U. S. 10 How., 257.)

The substantive law of Louisiana, just as in the Philippine Islands, is founded on the Civil Law.

"It must usually appear in such a case that this outstanding title existed at the time of the commencement of the suit, and was one on which the holder could recover."

(Love v. Simms, 22 U. S., 9 Wheat, 515.)

In the case before us the original defendants were not estopped to defend. They did not claim under the original plaintiffs. There was no relation of landlord and tenant.

Chapter III of the Philippine Code of Procedure in Civil Actions declares the respective periods of time within which different classes of actions shall prescribe. Section 39 of this Chapter provides that "Civil actions can only be commenced within the periods prescribed in this chapter after the cause of action accrues, but where a different limitation is prescribed by this Code, that shall govern."

The Code of Procedure was by Act 212 of the Philippine Commission put in effect on October 1, 1901. The cause of action in this case arose in November, 1902. In consequence the provisions of the Code were applicable as to the time within which a civil action could be brought.

Section 40 of Chapter III of the Code provides that "An action for recovery of title to, or possession of real property, or an interest therein, can only be brought within ten years after the cause of such action accrues."

Apart from Chapter III the only special provision regarding actions for the recovery of title to, or possession of, real estate is found in Section 80, Chapter IV, and is for the bringing in a Justice of the Peace Court of an action of "forcible entry and detainer."

The Roman Catholic Church in this action complains that in the month of November, 1902, it was unlawfully deprived of the possession of the property in dispute. At any time during one year after such deprivation it might have commenced an action of "forcible entry and detainer" before a Justice of the Peace under Section 80 of the Code.

This present action was commenced in May, 1904, in the Court of First Instance. By waiting until after the year allowed by law had expired the Roman Catholic Church lost its right of action, if any it had, to gain possession of the property by an action of forcible entry and detainer. After the year had run the legal status was such that the Church in order to obtain possession of the property was obliged to set up and maintain its superior title. In opposition to any such claim of title it is submitted that the proofs in this case have established the following:

A. The title to the property in dispute was in the Crown of Spain for a long period of years prior to the date of the Treaty of Paris.

B. By the Treaty of Paris of December 10, 1898, that title passed to the government of the United States of America and has remained there up to this time.

It does not appear in this action that the Roman Catholic Church ever acquired any ownership or title.

"Ownership is acquired by occupation."

Ownership and other property rights are acquired and transmitted by law, by gift, by testate or intestate succession, and, in consequence of certain contracts, by conveyance (Spanish text, *tradicion*).

"They can also be acquired by prescription." (Article 609 of Civil Code of the Philippines.)

The Roman Catholic Church came to the Philippine Islands a long time after Spain had conquered that territory and had been recognized as owner of the same by Pope Alexander VI. in his bull of concession of 1493.

Thereafter the Roman Catholic Church could not have acquired the ownership of ecclesiastical property by law, because there is no Spanish law which permits the cession, donation, sale or other transfer of the ownership of such property to the Church of Rome. On the contrary there exist laws which oppose the view that this class of property was ever ceded, donated or sold by the Crown of Spain to the Roman Church.

The Bull of May 3, 1493, of Pope Alexander VI. renounces expressly all his jurisdiction, temporal and spiritual, in favor of the rulers of Spain, Ferdinand and Isabella, in respect to all the land of the Philippines (San Pedro 12, Ultramarine Legislation).

In the Compilation of the Laws of the Indies appears the following:

"Wherefore the rights of Ecclesiastical Patronage belong to us in all the States of the Indies, because of having discovered and acquired that new world, having built in it churches and monasteries at our cost and the Catholic Señors, or ancestors, as also having conceded to us by the Bulls of the Highest Pontiffs of their own free will for their conservation and the right which we have to them." (Law 1, Title VI., Vol. L.)

"Because it is our intention that there be erected, instituted, founded and constituted all the Churches, Cathedrals, Parished Monasteries * * * wherever necessary for the jurisdiction, doctrine, teaching and propagation of our holy Roman Catholic Faith, and we will help with our Royal treasure whenever it is possible that it will have effect, and to us belongs the patronage of all our Indies, and take notice of the parts and places where these ought to be found and are necessary. We order that there be not erected, instituted, founded, nor constituted a church, cathedral, nor Parish without an express permission from us. * * *" (Law II. of same Title and Vol.)

"Because our Sovereign Kings, our ancestors, since the discovery of the Western Indies ordered and commanded that in those provinces churches be erected to offer sacrifices to God our Lord * * * and proposed to the high Pontiffs that cathedrals and Metropolitans be erected, giving for their buildings, endowments, ornaments and Service for Divine worship a great part of our Royal Treasure. * * *

We order and command our viceroys, Presidents, and Governors of our Indies that they inform and report to us the churches that are founded and those it is considered convenient to be found. * * *" (Law 1, Title II, Book 1, Compilation of the Laws of the Indies.)

The opinion of the Supreme Court of the Philippine Islands in this cause follows largely the majority opinion of the same Court in the case of Barlin vs. Ramirez (VII. Philippine Reports, 41), in which latter opinion we find several appropriate citations from the Spanish laws. We quote from this majority opinion in Barlin vs. Ramirez the following:

"It does not admit of doubt that from the earliest times the parish churches in the Philippine Islands were built by the Spanish Government. Law 2, Title 2, Book 1, of the Compilation of the Laws of the Indies, is, in part, as follows:

" 'Having erected all the churches, cathedrals and parish houses of the Spaniards and natives of our Indian possessions from their discovery at the cost and expense of our royal treasury, and applied for their service and maintenance the part of the tithes belonging to us by apostolic concession according to the division we have made.'

"Law 3 of the same title relates to the construction of parochial churches such as the one in question. That law is as follows:

" 'The parish churches which may be erected in Spanish towns shall be of durable and decent construction. Their cost shall be divided and paid in three parts: One by our royal treasury, another by the residents and Indian commissionaires of the place where such churches are constructed, and the other part by the Indians who abide there; and if within the limits of a city, village, or place there should be any Indians incorporated to our royal crown, we command that for our part there be contributed the same amount as the residents and commissionaires, respectively, contribute; and the residents who have no Indians shall also contribute for this purpose in accordance with their stations and wealth, and that which is so given shall be deducted from the share the Indians should pay.'

"Law II. of the same title is as follows:

" 'We command that the part of the tithes which belongs to the

fund for the erection of churches shall be given to their superintendents to be expended for those things necessary for these churches with the advice of the prelates and officials, and by their warrants, and not otherwise. And we request and charge the archbishops and bishops not to interfere in the collection and disbursements thereof, but to guard these structures.'

"Law 4, Title 3, Book 6, is as follows:

" 'In all settlements, even though the Indians are few, there shall be erected a church where mass can be decently held, and it shall have a door with a key notwithstanding the fact that it be the subject to or separate from a parish.'

"Not only were all the parish churches in the Philippines erected by the King and under his direction, but it was made unlawful to erect a church without the license of the King. This provision is contained in Law 2, Title 6, Book 1, which is as follows:

" 'Whereas it is our intention to erect, institute, found, and maintain all cathedrals, parish churches, monasteries, votive hospitals, churches, and religious and pious establishments where they are necessary for the teaching, propagation and preaching of the doctrine of our sacred Roman Catholic faith, and to aid to this effect with our royal treasury whenever possible, and to receive information of such places where they should be founded and are necessary, and the ecclesiastical patronage of all our Indies belonging to us:

" 'We command that there shall not be erected, instituted, founded or maintained any cathedral, parish church, monastery, hospital, or votive churches, or other pious or religious establishment without our express permission as is provided in Law 1, Title 2, and Law 1, Title 3, of this book, notwithstanding any permission heretofore given by our viceroy or other ministers, which in this respect we revoke and make null, void, and of no effect.' "

(Vol. VII. Philippine Reports, 49-50.)

The same opinion pursues still further the investigation of the question of title in cases of the kind before us and we quote again from it:

"This church, and other churches similarly situated in the Philippines, having been erected by the Spanish Government, and under its

direction, the next question to be considered is, To whom did these churches belong?

" 'Law XII—How Sacred or religious Things can not be owned by any person.

" 'No sacred, religious, or holy thing, devoted to the service of God, can be the subject of ownership by any man, nor can it be considered as included in his property holdings. Although the priests may have such things in their possession, yet they are not the owners thereof. They hold them as guardians or servants or because they have the care of the same and serve God in or with them. Hence they were allowed to take from the revenues of the church and lands what was reasonably necessary for their support; the balance, belonging to God, was to be devoted to pious purposes, such as the feeding and clothing of the poor, the support of orphans, the marrying of poor virgins to prevent their becoming evil women because of their poverty, and for the redemption of captives and the repairing of churches, and the buying of chalices, clothing, books, and other things which they might be in need of, and other similar charitable purposes.'

"And then taking up for consideration the first of the classes into which this law has divided these things, it defines in Law 13 consecrated things. That law is as follows:

" 'Sacred things are those which are consecrated by the bishops, such as churches, the altars therein, crosses, chalices, censers, vestments, books, and all other things which are intended for the service of the church, and the title to these things can not be alienated except in certain specific cases as we have already shown in the first partida of this book by the laws dealing with this subject. We say further that even where a consecrated church is razed, the ground upon which it formerly stood shall always be consecrated ground. But if any consecrated church should fall into the hands of the enemies of our faith it shall there and then cease to be sacred as long as the enemy has it under control, although once recovered by the Christians, it will again become sacred, reverting to its condition before the enemy seized it and shall have all the rights and privileges formerly belonging to it.' " (Vol. VII. Philippine Reports, 51-52.)

It must not be lost sight of that the laws referred to by the Supreme Court of the Philippine Islands (The Laws of the Indies) were promulgated by the Crown of Spain. The Roman Catholic Church was and is the church of the Crown of Spain. In Law 13 just quoted we find the language "But if any consecrated church should fall into the hands of the enemies of our faith it shall there and then cease to be sacred as long as the enemy has it under control."

It is worth serious consideration as to what effect has been had upon the status of these church properties: First, by the conquest of the Philippine Islands by the United States Government, certainly an enemy of the Crown of Spain, and certainly outside of the church of Rome, and therefore to be considered its enemy; Second, by the church property falling into the hands of the Independent Filipino Church it fell into the hands of "the enemies of our faith."

Can it not with reason be said that by reason of these changes in title and possession the legendary status of consecrated ground, incapable of ownership, has been obliterated and that the ground and the buildings upon it become clearly property of the reigning government, i. e., the United States of America?

That the title and the control of the ground and the buildings used for Church purposes in the Philippines even up to the Treaty of Paris, with only their usufruct in the Church, were in the Crown of Spain appears from numerous laws enacted by the Crown of Spain, having reference to the manner of constituting and keeping in repair, churches, convents and cemeteries, among which are the following, to wit: Royal Order, January 31, 1856; Ordinances of Good Government, Chapter 46; Royal Order of December 31, 1836; Decree of Supreme Government of January 13, 1836; Compilation of the Laws of the Indies, Law 32; Decree of Governor General, February 15, 1888; Royal Order of October 27, 1887, all in "Leyes de Ultramar."

And even as late as the end of the year 1890 we find the following:

"General Budget, Royal Decree of December 23, 1890.

(Approving Budgets). Your Excellency: the King (whom God preserve), and in his name the Queen Regent of the Kingdom, has

seen fit to issue on this date, the following Royal Decree: In conformity with the suggestion made by the Minister for the Colonies, in accordance with the Council of Ministers, I do, in the name of my August son, the King, Don Alphonso XIII, and as Queen Regent of the Kingdom, decree the following:

Art. 1. The expenses of the State in the Philippine Islands during the calendar 1891 are fixed at 11,342.730 pesos and 82 centimos, distributed by sections, chapters and articles, according to details set forth in the annexed statement marked with the capital letter A. * * *

Art. 17. The Provincial and Municipal budgets shall include any other obligations, besides those merely of a legal character, those of the maintenance of the service of the Church, the construction, repair and preservation of public temples and works of all kinds approved by competent authority.

* * * * * * * * *

Art. 38. The Minister for the Colonies shall adopt the proper measures for the punctual execution of this decree. Manila Gazette of February 15, 1891."

(Dictionary of Administration of the Philippines, Berris, pp. 491-2-5 of year 1891; Manila Edition of 1893.)

It is submitted that the reasoning of the majority opinion in Barlin vs. Ramirez, so largely quoted from, is erroneous and for the correct view of the law and the facts we are content to rely on the dissenting opinion of Justice Carson in the same case, which says in part:

"As stated in the majority opinion, 'it does not admit of doubt that the parish churches in the Philippines were built by the Spanish Government,' and it would seem therefore that prior to their dedication, the beneficial ownership, the legal title, the possession and control of all this property must be taken to have been vested in that Government. But it must be admitted that after this property was dedicated the ownership, in contemplation of Spanish law, was said to have been in God, and there can be no doubt that the physical possession and control of these churches for the purposes for which they were dedicated was given to the Roman Catholic Church—not,

as I think, absolutely and conclusively, but limited by and subject to the royal patronage (*patronato real*), which included the right to intervene in the appointment of the representatives of the church into whose hands the possession and control of the sacred edifices were to be intrusted.

"The anomalous status thus created might well have given rise to doubts and uncertainties as to the legal title and beneficial ownership of this property had not the grantor and the lawgiver of Spain expressly and specifically provided that neither the Roman Catholic Church, nor any other person, was or could become the owner thereof, and that all these sacred edifices were to be regarded as beyond the commerce of men.

" 'No sacred, religious, or holy thing, devoted to the service of God, can be the subject of ownership by any man, nor can it be considered as included in his property holdings. Although the priests may have such things in their possession, yet they are not the owners thereof. They hold them thus as guardians or servants, or because they have the care of the same and serve God in or with them. Hence they were allowed to take from the revenues of the church and lands what was reasonably necessary for their support; the balance, belonging to God, was to be devoted to pious purposes, such as the feeding and clothing of the poor, the support of orphans, the marrying of poor virgins to prevent their becoming evil women because of their poverty; and for the redemption of captives and the repairing of the churches, and the buying of chalices, clothing, books and other things which they might be in need of, and other similar charitable purposes.' (Law XII, Title 28, Third Partida.)

"It is difficult to determine, and still more difficult to state, the precise meaning and legal effect of this disposition of the ownership, possession, and control of the parish churches in the Philippines; but since it was not possible for God, in any usual or ordinary sense, to take or hold, to enforce or to defend the legal title to this property, it would seem that a grant to Him by the King or the Government of Spain could not suffice to convey to Him the legal title of the property set out in the grant, and the truth would seem to be that the treatment of this property in contemplation of Spanish law

Supreme Court of the Philippine Islands, one of the grounds being the discovery of new and material evidence which could not have been discovered before the trial in the Court below by the exercise of due diligence. This motion was supported by affidavit of Angel Luna (see pages 104-105 of Record).

Fifth Assignment of Error.

5. *The Court erred in affirming the decision of the trial Court, ordering the defendants to deliver possession of the property to the plaintiffs.*

The subject matter of this assignment has already been treated under the first, second and third assignments of error.

Résumé.

It is respectfully submitted that the following facts are established with the attendant conclusions of law:

Facts Established.

a. That the entire Philippine Islands were acquired by the Crown of Spain by discovery and conquest.

b. That the Church of Rome, after the acquisition of the Philippine Islands by the Crown of Spain, renounced, by the Bull of May 3, 1493, all jurisdiction, temporal and spiritual, in the Philippine Islands in favor of the Crown of Spain.

c. That the Crown of Spain continued thereafter and down to the date of the Treaty of Paris to hold all public property, including the property known as church property, as a part of its domain, subject only to the usufruct in the Church, and continued to provide for the erection and maintenance of places of public worship upon the "Church lands."

d. That by the Treaty of Paris all right, title and interest of the Crown of Spain, of whatsoever nature, in any property in the Philippine Islands passed to the Government of the United States.

e. That the period of one year immediately following the date on which defendants in error, according to their allegations, were dis-

possessed by plaintiffs in error expired in the month of November, 1903.

Conclusions of Law.

1. That from the time of the acquisition of the Philippine Islands by Spain the title to the property in dispute has always been in the Crown of Spain up to the taking effect of the Treaty of Paris.

2. That at the time when the Treaty of Paris became effective the title to the property in dispute passed to the Government of the United States, where it still remains.

3. That the right of defendants in error to maintain an action of "forcible entry and detainer" prescribed in the month of November, 1903.

4. That only the United States Government can maintain against plaintiffs in error an action to recover the title or possession of the property in dispute.

Wherefore plaintiffs in error ask a reversal of the judgment of the Supreme Court of the Philippine Islands and that they be put in possession of the property in dispute.

Respectfully submitted,

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and
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FRANK B. INGERSOLL,
Of Counsel.